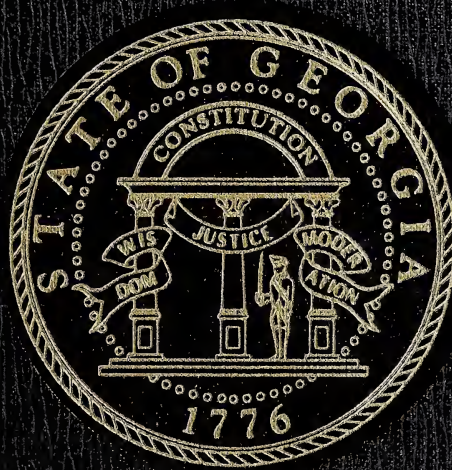


**OFFICIAL CODE
OF
GEORGIA
—
ANNOTATED**



VOLUME 29

Title 40. Motor Vehicles and Traffic

2014 Edition



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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 29 **2014 Edition**

Title 40. Motor Vehicles and Traffic

Including Acts of the 2014 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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OFFICE OF SECRETARY OF STATE

**I, Brian P. Kemp, Secretary of State of the
State of Georgia, do hereby certify that**

the statutory portion of the Official Code of Georgia Annotated contained
in this volume is a true and correct copy of such material as enacted by
the General Assembly of Georgia; all as same appear of file and record in
this office. _____

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
the seal of my office, at the Capitol, in the City of Atlanta, this
23rd day of June, in the year of our Lord Two Thousand and
Fourteen and of the Independence of the United States of
America the Two Hundred and Thirty-Eighth.



B. P. Kemp

Brian P. Kemp, Secretary of State

Preface

This volume cumulates and replaces the 2011 edition of Volume 29 of the Official Code of Georgia Annotated, as supplemented by the 2013 Cumulative Supplement. The 2011 Volume 29 and its 2013 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 40 by the General Assembly through the 2014 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2012, 2013, and 2014 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2012 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Cross references. — Regulation of retail installment sales of motor vehicles, § 10-1-30 et seq. Regulation of sales of gasoline and other petroleum products generally, § 10-1-140 et seq. Size and weight restrictions pertaining to motor vehicles and loads, § 32-6-20 et seq. Mo-

tor vehicle accident insurance, § 33-7-11 and T. 33, C. 34. Regulation of operation of self-service motor fuel dispensing pumps, § 36-60-1. Adoption of ordinances and authority to contract for removal of junked motor vehicles, § 36-60-4. Installation of road grates to accommodate bicycles,

§ 36-60-5. Regulation of activities of driver training schools and instructors, T. 43, C. 13. Regulation of motor vehicle racetracks, T. 43, C. 25. Regulation of used car and car parts dealers, T. 43, C. 47. Penalty for unauthorized display of sign, tag, or other documents on motor vehicle so as to convey impression that owner of motor vehicle is member of Governor's staff, § 45-1-3. Motor carriers, T. 46, C. 7. Motor fuel taxes, § 48-9-1 et seq.

Editor's notes. — Judicial decisions, attorney general opinions, and cross reference notes in this bound volume which cite to Code sections in Title 24 refer to provisions of such title as it existed prior to January 1, 2013, effective date of Ga. L. 2011, p. 99/HB 24. See the Table of Comparable Provisions at the beginning of the version of Title 24 which became effective on January 1, 2013.

JUDICIAL DECISIONS

Law on motor vehicles and traffic must be strictly construed. O'Steen v. Boone, 117 Ga. App. 174, 160 S.E.2d 229 (1968).

Applicability of title to motorcycles. — Motorcycle is subject to the provisions of the law on motor vehicles and traffic (see O.C.G.A. T. 40) in general and to those of O.C.G.A. § 40-2-20 in particular. Grange Mut. Cas. Co. v. King, 174 Ga. App. 716, 331 S.E.2d 41 (1985).

Motorcycles taxed separately. — General Assembly, in providing license taxes, separated motorcycles from the general class of motor vehicles. Bullard v. Life & Cas. Ins. Co., 178 Ga. 673, 173 S.E. 855, answer conformed to, 49 Ga. App. 27, 174 S.E. 256 (1934).

Cited in Seaboard Air Line Ry. v. Benton, 175 Ga. 491, 165 S.E. 593 (1932).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of motor vehicle and traffic law. — Overall primary purpose of the law on motor vehicles and traffic is to provide for the registration and licensing

of motor vehicles, including providing dealers with the convenience of a special tag, transferable at will from vehicle to vehicle. 1954-56 Op. Att'y Gen. p. 473.

RESEARCH REFERENCES

ALR. — Liability of owner or operator of motor vehicle for injury caused thereby while it is being repaired or serviced, 15 ALR3d 1387.

Criminal liability based on violation of statute or ordinance specifically regulating operation of snowmobile, 45 ALR3d 1438.

Search and seizure: lawfulness of demand for driver's license, vehicle registration, or proof of insurance, pursuant to police stop to assist motorist, 19 ALR5th 884.

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- 40-1-167. Required information on license plates of limousines.
- 40-1-168. Local taxation of limousine carriers prohibited.
- 40-1-169. Enforcement.
- 40-1-170. Application to every vehicle controlled by limousine carrier.

Editor's notes. — Since the purpose of Ga. L. 1990, p. 2048, was to “revise, reorganize, modernize, consolidate, and clarify” laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40

were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

JUDICIAL DECISIONS

Chapter applicable to self-propelled vehicles over public highways and roads. — Licensing and regulating statutes as are now contained in the motor vehicle law only apply as to those vehicles that are capable of being operated generally over the public highways and roads of this state by reason of their own self-propelled mechanical power, and not to those vehicles whose orbit of operation is limited to the length of a trolley wire constructed and maintained under a franchise. *Thompson v.*

Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Civil recovery not necessarily precluded by violation of provisions. — Fact that the decedent was driving an automobile in violation of the statutes regulating the use of motor vehicles would not necessarily preclude any sort of civil recovery. *Seaboard Air Line Ry. v. Benton*, 43 Ga. App. 495, 159 S.E. 717 (1931), rev'd on other grounds, 175 Ga. 491, 165 S.E. 593 (1932).

OPINIONS OF THE ATTORNEY GENERAL

Arrests by constable. — Constable can make arrests for violations of the motor vehicle laws; if a constable made such arrests, the constable would do so at

the constable's own expense and would be entitled to no fees. 1968 Op. Att'y Gen. No. 68-324 (but see O.C.G.A. § 15-10-103).

RESEARCH REFERENCES

ALR. — Motorcycle as within contract, statute, or ordinance in relation to motor cars, motor-driven cars, etc., 48 ALR 1090; 70 ALR 1253.

Liability for killing or injuring, by motor vehicle, livestock or fowl on highway, 55 ALR4th 822.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 2011, p. 479, § 5/HB 112, effective July 1, 2011, redesignated the existing provisions of Chapter

1, Title 40 as Article 1 of Chapter 1, Title 40.

40-1-1. Definitions.

As used in this title, the term:

(1) “Alcohol concentration” means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

(3) "All-terrain vehicle" means any motorized vehicle designed for off-road use which is equipped with four low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering.

(4) "Arterial street" means any U.S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

(5) "Authorized emergency vehicle" means a motor vehicle belonging to a public utility corporation or operated by the Department of Transportation and designated as an emergency vehicle by the Department of Public Safety; a motor vehicle belonging to a fire department or a certified private vehicle belonging to a volunteer firefighter or a fire-fighting association, partnership, or corporation; an ambulance; or a motor vehicle belonging to a federal, state, or local law enforcement agency, provided such vehicle is in use as an emergency vehicle by one authorized to use it for that purpose.

(6) "Bicycle" means every device propelled by human power upon which any person may ride, having only two wheels which are in tandem and either of which is more than 13 inches in diameter.

(6.1) "Bicycle lane" means a portion of the roadway that has been designated by striping, pavement markings, or signage for the exclusive or preferential use of persons operating bicycles. Bicycle lanes shall at a minimum, unless impracticable, be required to meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials.

(6.2) "Bicycle path" means a right of way under the jurisdiction and control of this state or a local political subdivision thereof designated for use by bicycle riders.

(6.3) "Bicycle trailer" means every device pulled by a bicycle and designed by the manufacturer of such device to carry human passengers.

(7) "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(8) "Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway

there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(8.01) "Class I all-terrain vehicle" means a motorized, off-highway recreational vehicle 50 inches or less in width with a dry weight of 1,200 pounds or less that travels on three or more nonhighway tires and is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

(8.1) "Class II all-terrain vehicle" means a motorized, off-highway recreational vehicle which is not a class I all-terrain vehicle and which is 65 inches or less in width with a dry weight of 2,000 pounds or less that travels on four or more nonhighway tires and is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

(8.2) "Class III all-terrain vehicle" means any motor vehicle that:

(A) Weighs more than a class II all-terrain vehicle and less than 8,000 pounds;

(B) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; and

(C) Is actually being operated off a highway.

(8.3) "Commercial motor vehicle" means any self-propelled or towed motor vehicle used on a highway in intrastate and interstate commerce to transport passengers or property when the vehicle:

(A) Has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight of 4,537 kg (10,001 lbs.) or more;

(B) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used to transport material determined to be hazardous by the secretary of the United States Department of Transportation under 49 U.S.C. Section 5103 and transported in a quantity that requires placards under regulations prescribed under 49 C.F.R., Subtitle B, Chapter I, Subchapter C.

(9) "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except only at such points and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

(10) "Crosswalk" means:

(A) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway; or

(B) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(11) "Dealer" means a person engaged in the business of buying, selling, or exchanging vehicles who has an established place of business in this state.

(12) "Demonstrator" means any motor vehicle which has not been the subject of a sale at retail to the general public but which has been operated on the roads of this state in the course of a motor vehicle dealer's business.

(13) "Divided highway" means a highway divided into two or more roadways by leaving an intervening space or by a physical barrier or by a clearly indicated dividing section so constructed as to impede vehicular traffic.

(14) "Driver" means every person who drives or is in actual physical control of a vehicle.

(15) "Driver's license" means any license to operate a motor vehicle issued under the laws of this state.

(15.3) "DUI Alcohol or Drug Use Risk Reduction Program" means a program certified by the Department of Driver Services in accordance with subsection (e) of Code Section 40-5-83.

(15.5) "Electric assisted bicycle" means a device with two or three wheels which has a saddle and fully operative pedals for human propulsion and also has an electric motor. For such a device to be considered an electric assisted bicycle, it shall meet the requirements of the Federal Motor Vehicle Safety Standards, as set forth in 49 C.F.R. Section 571, et seq., and shall operate in such a manner that the electric motor disengages or ceases to function when the brakes are applied. The electric motor in an electric assisted bicycle shall:

- (A) Have a power output of not more than 1,000 watts;
- (B) Be incapable of propelling the device at a speed of more than 20 miles per hour on level ground; and
- (C) Be incapable of further increasing the speed of the device when human power alone is used to propel the device at or more than 20 miles per hour.

(15.6) "Electric personal assistive mobility device" or "EPAMD" means a self-balancing, two nontandem wheeled device designed to transport only one person and having an electric propulsion system with average power of 750 watts (1 horsepower) and a maximum speed of less than 20 miles per hour on a paved level surface when powered solely by such propulsion system and ridden by an operator who weighs 170 pounds.

(16) "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(17) "Flammable liquid" means any liquid which has a flash point of 141 degrees Fahrenheit or less.

(17.1) "Former military motor vehicle" means a motor vehicle which operates on the ground, including a trailer, that was manufactured for use in any country's military forces and is maintained to represent its military design, regardless of the vehicle's size, weight, or year of manufacture. Such term shall not include motor vehicles armed for combat or vehicles owned or operated by this state, the United States, or any foreign government.

(17.2) "Golf car" or "golf cart" means any motorized vehicle designed for the purpose and exclusive use of conveying one or more persons and equipment to play the game of golf in an area designated as a golf course. For such a vehicle to be considered a golf car or golf cart, its average speed shall be less than 15 miles per hour (24 kilometers per hour) on a level road surface with a 0.5% grade (0.3 degrees) comprising a straight course composed of a concrete or asphalt surface that is dry and free from loose material or surface contamination with a minimum coefficient of friction of 0.8 between tire and surface.

(18) "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.

(18.1) "Hazardous material" means a substance or material as designated pursuant to the Federal Hazardous Materials Law, 49 U.S.C. Section 5103(a).

(19) "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(20) "House trailer" means:

(A) A trailer or semitrailer which is designed, constructed, and equipped as a dwelling place or living abode (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways; or

(B) A trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in subparagraph (A) of this paragraph, but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(21) "Implement of husbandry" means a vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(21.1) "Infant sling" means every device which is designed by the manufacturer to be worn by a person for the purpose of carrying an infant either on the chest or back of the wearer.

(22)(A) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(B) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(C) The junction of an alley with a street or highway shall not constitute an intersection.

(23) "Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

(24) "License" or "license to operate a motor vehicle" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:

(A) Any temporary license or instruction permit;

(B) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(C) Any nonresident's operating privilege as defined in this Code section.

(24.1) "Lightweight commercial vehicle" means a motor vehicle which does not meet the definition of a commercial motor vehicle and which, in the furtherance of a commercial enterprise:

(A) Is used to transport hazardous materials in a type and quantity for which placards are not required in accordance with the Hazardous Materials Regulations prescribed by the United States Department of Transportation, Title 49 C.F.R. Part 172, Subpart F, or compatible rules prescribed by the commissioner of public safety;

(B) Is used to transport property for compensation;

(C) Is used to transport passengers for compensation, other than a taxicab; or

(D) Is a wrecker or tow truck.

(24.2) "Limousine" has the same meaning as provided in paragraph (4) of Code Section 40-1-151.

(25) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the Constitution and laws of this state.

(25.1) "Low-speed vehicle" means any four-wheeled electric vehicle whose top speed attainable in one mile is greater than 20 miles per hour but not greater than 25 miles per hour on a paved level surface and which is manufactured in compliance with those federal motor vehicle safety standards for low-speed vehicles set forth in 49 C.F.R. Section 571.500 and in effect on January 1, 2001.

(26) "Manufacturer" means a person engaged in the manufacture of vehicles and who has an established place of business in this state. Pertaining to PTVs only, the term "manufacturer" also means any person engaged in the manufacture of vehicles who does business in this state, including but not limited to any person who makes

modifications to a vehicle that are not approved by the original equipment manufacturer and which may adversely affect the safe operation and performance of the vehicle.

(27) "Metal tire" means every tire of which the surface in contact with the highway is wholly or partly of metal or other hard, nonresilient material. A vehicle shall be considered equipped with metal tires when metal tires are used on two or more wheels.

(28) "Moped" means a motor driven cycle equipped with two or three wheels, with or without foot pedals to permit muscular propulsion, and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement shall be 3.05 cubic inches (50 cubic centimeters) regardless of the number of chambers in such power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour (48.28 kilometers per hour) on level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.

(28.1) "Motor carrier" shall have the same meaning as provided for in Code Section 40-2-1, and the terms "carrier" and "motor carrier" are synonymous.

(29) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, all-terrain vehicle, and moped.

(30) "Motor driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower, every bicycle with a motor attached, and every moped.

(31) "Motor home" means every motor vehicle designed, used, or maintained primarily as a mobile dwelling, office, or commercial space.

(32) Reserved.

(33) "Motor vehicle" means every vehicle which is self-propelled other than an electric personal assistive mobility device (EPAMD).

(33.1) "Multipurpose off-highway vehicle" means any motorized vehicle having features specifically intended for utility use and having the following characteristics:

(A) Has the capability to transport persons or cargo or both;

(B) Operates between 25 miles per hour (40.2 kilometers per hour) and 50 miles per hour (80.4 kilometers per hour);

(C) Has an overall width of 80 inches (2,030 millimeters) or less, exclusive of accessories or attachments;

(D) Is designed to travel on four or more wheels;

(E) Uses a steering wheel for steering control;

(F) Contains a nonstraddle seat;

(G) Has a gross vehicle weight rating of less than 4,000 pounds (1,814 kilograms); and

(H) Has a minimum cargo capacity of 350 pounds (159 kilograms).

(34) "New motor vehicle" means any motor vehicle which is not a demonstrator and has never been the subject of a sale at retail to the general public.

(35) "Nonresident" means every person who is not a resident of this state.

(36) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle or the use of a vehicle owned by such person in this state.

(37) "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title which are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(38) "Operator" means any person who drives or is in actual physical control of a motor vehicle.

(39) "Owner" means a person, other than a lienholder or security interest holder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in or lien by another person but excludes a lessee under a lease not intended as security except as otherwise specifically provided in this title.

(40) "Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(41) "Passenger car" means every motor vehicle, except all-terrain vehicles, motorcycles, motor driven cycles, multipurpose off-highway vehicles, personal transportation vehicles, and low-speed vehicles, designed for carrying ten passengers or less and used for the transportation of persons.

(42) "Pedestrian" means any person afoot.

(42.1) "Pedestrian hybrid beacon" means a special type of hybrid beacon used to warn and control traffic at locations without a traffic-control signal to assist pedestrians in crossing a street or highway at a marked crosswalk.

(43) "Person" means every natural person, firm, partnership, association, corporation, or trust.

(43.1) "Personal transportation vehicle" or "PTV" means:

(A) Any motor vehicle having no fewer than three wheels and an unladen weight of 1,300 pounds or less and which cannot operate at more than 20 miles per hour if such vehicle was authorized to operate on local roads by a local authority prior to January 1, 2012. Such vehicles may also be referred to as "motorized carts" in such local ordinances; and

(B) Any motor vehicle:

(i) With a minimum of four wheels;

(ii) Capable of a maximum level ground speed of less than 20 miles per hour;

(iii) With a maximum gross vehicle unladen or empty weight of 1,375 pounds; and

(iv) Capable of transporting not more than eight persons.

The term does not include mobility aids, including electric personal assistive mobility devices, power wheelchairs, and scooters, that can be used indoors and outdoors for the express purpose of enabling mobility for a person with a disability. The term also does not include any all-terrain vehicle or multipurpose off-highway vehicle.

(43.2) "Personal transportation vehicle path" or "PTV path" means a right of way under the jurisdiction and control of this state or a local political subdivision thereof designated for use by personal transportation vehicle drivers.

(44) "Pneumatic tire" means every tire in which compressed air is designed to support the load. A vehicle shall be considered equipped with pneumatic tires when pneumatic tires are used on all wheels.

(45) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(46) "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(47) "Private road or driveway" means every way or place in private ownership and used for vehicular traffic by the owner and those having express or implied permission from the owner, but not by other persons.

(48) "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

(49) "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(50) "Railroad train" means a steam engine or electric engine or other motor, with or without cars coupled thereto, operated upon rails.

(50.01) "Recreational off-highway vehicle" means a motorized vehicle designed for off-road use which is equipped with four or more nonhighway tires and which is 65 inches or less in width.

(50.1) "Regulatory compliance inspection" means the examination of facilities, property, buildings, vehicles, drivers, employees, cargo, packages, records, books, or supporting documentation kept or required to be kept in the normal course of business or enterprise operations.

(51) "Residence district" means the territory contiguous to and including a highway not comprising a business district, when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

(52) "Right of way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(53) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to any such roadway separately, but not to all such roadways collectively.

(54) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is

protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(55) "School bus" means:

(A) A motor vehicle operated for the transportation of school children to and from school or school activities or for the transportation of children to and from church or church activities. Such term shall not include a motor vehicle with a capacity of 15 persons or less operated for the transportation of school children to and from school activities or for the transportation of children to and from church or church activities if such motor vehicle is not being used for the transportation of school children to and from school; or

(B) A motor vehicle operated by a local transit system which meets the equipment and identification requirements of Code Section 40-8-115; provided, however, that such vehicle shall be a school bus only while transporting school children and no other passengers to or from school.

(56) "Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(56.1) "Shared use path" means a pathway physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right of way or within an independent right of way and used by bicycles, pedestrians, manual and motorized wheelchairs, and other authorized motorized and nonmotorized users.

(57) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a railway, and the adjacent property lines, intended for use by pedestrians.

(58) "Solid tires" means tires of rubber or similarly elastic material that do not depend on confined air for the support of the load. A vehicle shall be considered equipped with solid tires when solid tires are used on two or more wheels.

(59) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ditch-digging apparatus, well-boring apparatus, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power

shovels and drag lines, and self-propelled cranes and earth-moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(60) "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(61) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

(62) "Stop" or "stopping":

(A) When required, means complete cessation from movement;
or

(B) When prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

(63) "Street" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(63.1) "Taxicab" means a motor vehicle for hire which conveys passengers between locations of their choice and is a mode of public transportation for a single passenger or small group for a fee. Such term shall also mean taxi or cab, but not a bus or school bus, limousine, passenger car, or commercial motor vehicle.

(64) "Through highway" means every highway or portion thereof on which vehicular traffic is given preferential right of way and at the entrances to which vehicular traffic from intersecting highways is required by law to yield the right of way to vehicles on such through highway in obedience to a stop sign, yield sign, or other official traffic-control device, when such signs or devices are erected as provided in this title.

(65) "Tractor" means any self-propelled vehicle designed for use as a traveling power plant or for drawing other vehicles but having no provision for carrying loads independently.

(66) "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

(67) "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(68) "Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(69) "Tripper service" means regularly scheduled mass transportation service which is open to the fare-paying public but which is also designed or modified to accommodate the needs of elementary or secondary school students and school personnel.

(70) "Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(71) "Truck camper" means any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space.

(72) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(73) "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more.

(74) "Used motor vehicle" means any motor vehicle which has been the subject of a sale at retail to the general public.

(75) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(76) "Wrecker" means a vehicle designed, equipped, or used to tow or carry other motor vehicles by means of a hoist, crane, sling, lift, or roll-back or slide back platform, by a mechanism of a like or similar character, or by any combination thereof, and the terms "tow truck" and "wrecker" are synonymous. (Ga. L. 1927, p. 226, § 2; Code 1933, § 68-101; Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 1-9, 11, 13-21; Ga. L. 1966, p. 183, § 1; Ga. L. 1970, p. 586, § 1; Ga. L. 1973, p. 595, § 1; Ga. L. 1973, p. 598, § 1; Code 1933, § 68A-101, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 1; Ga. L. 1978, p. 2241, §§ 1, 3, 4; Ga. L. 1982, p. 3, § 40; Ga. L. 1983, p. 633, § 1; Ga. L. 1988, p. 691, §§ 1, 2; Ga. L. 1988, p. 1893, § 1; Ga. L. 1989, p. 1792, § 1; Ga. L. 1990, p. 2048, § 1; Ga. L. 1993, p. 518, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1996, p. 236, § 1; Ga. L. 1997, p. 419, § 1; Ga. L. 1999, p. 334, § 1; Ga. L. 2001, p. 4, § 40; Ga. L. 2002, p. 506, § 2; Ga. L. 2002, p. 512, §§ 2, 3; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11; Ga. L. 2002, p. 1378, § 1; Ga. L. 2003, p. 308, §§ 1, 2, 3; Ga. L. 2004, p.

67, § 1; Ga. L. 2004, p. 746, § 1; Ga. L. 2006, p. 428, § 1/HB 654; Ga. L. 2007, p. 652, § 1/HB 518; Ga. L. 2010, p. 143, § 1/HB 1005; Ga. L. 2010, p. 442, § 4/HB 1174; Ga. L. 2011, p. 247, § 1/SB 240; Ga. L. 2011, p. 426, § 1/HB 101; Ga. L. 2011, p. 479, §§ 6, 7, 8/HB 112; Ga. L. 2012, p. 726, §§ 1, 2, 3/HB 795; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2014, p. 409, § 1/SB 392; Ga. L. 2014, p. 710, § 1-5/SB 298; Ga. L. 2014, p. 745, § 1/HB 877.)

The 2012 amendment, effective May 1, 2012, substituted “more nonhighway tires and which is 50 inches or less in width” for “more low pressure tires and with a seat to be straddled by the operator and with handlebars for steering control” in paragraph (3); redesignated former paragraph (8.1) as present paragraph (8.01); substituted “1,200 pounds or less that travels on three or more nonhighway tires” for “1,000 pounds or less that travels on three or more low-pressure tires, has a saddle or seat for the operator,” in paragraph (8.01); added paragraph (8.1); in paragraph (8.2), substituted “Class III” for “Class II” in the introductory paragraph; substituted “class II” for “class I” in subparagraph (8.2)(A); and added paragraph (50.01).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “Code Section 40-1-151” for “Code Section 46-7-85.1” at the end of paragraph (24.2).

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, added paragraph (17.1). The second 2014 amendment, effective July 1, 2014, added paragraph (15.3). The third 2014 amendment, effective July 1, 2014, in paragraph (3), substituted “four low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering” for “three or more nonhighway tires and which is 50 inches or less in width”; added paragraph (17.1) (redesignated as paragraph (17.2)); in paragraph (26), added the last sentence; in paragraph (32), substituted “Reserved” for “‘Motorized cart’ means every motor vehicle having no less than three wheels and an unladen weight of 1,300 pounds or less and which cannot operate at more than 20 miles per hour”; added paragraph (33.1); in paragraph (41), substituted “all-terrain vehicles, motorcycles, motor driven cycles, multipur-

pose off-highway vehicles, personal transportation vehicles,” for “motorcycles, motor driven cycles,”; substituted the present provisions of paragraph (43.1) for the former provisions, which read: “‘Personal transportation vehicle’ means any motor vehicle:

“(A) With a minimum of four wheels;

“(B) Capable of a maximum level ground speed of less than 20 miles per hour;

“(C) With a maximum gross vehicle unladen or empty weight of 1,375 pounds; and

“(D) Capable of transporting not more than eight persons.

“The term does not include mobility aids, including power wheelchairs and scooters, that can be used indoors and outdoors for the express purpose of enabling mobility for a person with a disability. The term also does not include any all-terrain vehicle.”; and added paragraphs (43.2) and (56.1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a hyphen was deleted from “motor driven” in paragraphs (28), (30), and (41).

Pursuant to Code Section 28-9-5, in 1989, “side” was substituted for “sides” in paragraph (2).

Pursuant to Code Section 28-9-5, in 1993, paragraph (6.3) was redesignated as paragraph (21.1) to place it in alphabetical order.

Pursuant to Code Section 28-9-5, in 1996, “or” was inserted following the semicolon at the end of subparagraphs (10)(A) and (62)(A) and “49 C.F.R. Section 571, et seq.” was substituted for “49 CFR 571 et seq.” in paragraph (15.5).

Pursuant to Code Section 28-9-5, in 1997, a comma was deleted following “another person” in the second sentence of paragraph (39).

The amendment of this Code section by

Ga. L. 2002, p. 506, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 512, § 2. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Both Ga. L. 2014, p. 409, § 1/SB 392 and Ga. L. 2014, p. 745, § 1/HB 877 enacted a new paragraph (17.1). Pursuant to Code Section 28-9-5, the paragraph enacted by Ga. L. 2014, p. 745, § 1/HB 877 has been redesignated as paragraph (17.2).

U.S. Code. — Provisions concerning

the Transportation of Hazardous Materials are codified at 49 U.S.C. § 5101 et seq.

Law reviews. — For article surveying Georgia cases in the area of insurance from June 1977 through May 1978, see 30 *Mercer L. Rev.* 105 (1978). For article commenting on the 1997 amendment of this Code section, see 14 *Ga. St. U.L. Rev.* 215 (1997).

For note on the 2003 amendment to this Code section, see 20 *Ga. St. U.L. Rev.* 198 (2003).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

ALCOHOL CONCENTRATION

CROSSWALK

HIGHWAY

INTERSECTION

MOTORCYCLE

MOTOR VEHICLE

OFFICIAL TRAFFIC-CONTROL DEVICES

OWNER

PEDESTRIAN

RIGHT OF WAY

SCHOOL BUS

SPECIAL MOBILE EQUIPMENT

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 10-13, are included in the annotations for this Code section.

City ordinance did not impair operation of O.C.G.A. § 40-1-1(57). — Definition of "public sidewalk" found in *City of Forest Park, Ga.*, Ordinance § 9-8-45(f) is not unconstitutional as conflicting with state law because nothing in § 9-8-45 impairs the operation of O.C.G.A. § 40-1-1(57); by the statute's specific terms, § 40-1-1(57), is not intended to be a definition of general application, but defines the term "sidewalk" in the context of Title 40 of the Georgia Code, which is labeled "Motor Vehicles and Traffic," and it does not appear that the definition set forth in § 40-1-1(57) would apply elsewhere in the Code in which the word "sidewalk" is used in other contexts. *Braley v. City of Forest Park*, 286 Ga. 760,

692 S.E.2d 595 (2010).

Directing traffic is official police function. — Because a police officer was directing traffic and this activity necessarily is a police function, the officer was acting in the officer's official capacity at the time of a traffic accident, and the officer was entitled to assert official immunity as a defense to a claim of negligent conduct. *Sommerfield v. Blue Cross & Blue Shield, Inc.*, 235 Ga. App. 375, 509 S.E.2d 100 (1998).

Cited in *Tiller v. Georgia Power Co.*, 68 Ga. App. 224, 22 S.E.2d 623 (1942); *Casteel v. Anderson*, 89 Ga. App. 68, 78 S.E.2d 831 (1953); *Horne v. GEICO*, 132 Ga. App. 230, 207 S.E.2d 636 (1974); *Avera v. State*, 133 Ga. App. 469, 211 S.E.2d 417 (1974); *Prince v. Cotton States Mut. Ins. Co.*, 143 Ga. App. 512, 239 S.E.2d 198 (1977); *State v. Williams*, 156 Ga. App. 813, 275 S.E.2d 133 (1980); *Lott v. Smith*, 156 Ga. App. 826, 275 S.E.2d 720 (1980); *Cotton States Mut. Ins. Co. v. Statiras*, 157 Ga. App. 169, 276 S.E.2d 853

(1981); *McJunkin v. State*, 160 Ga. App. 30, 285 S.E.2d 756 (1981); *Blake v. Continental S.E. Lines*, 161 Ga. App. 869, 289 S.E.2d 551 (1982); *Tolbert v. Murrell*, 253 Ga. 566, 322 S.E.2d 487 (1984); *Grange Mut. Cas. Co. v. King*, 174 Ga. App. 716, 331 S.E.2d 41 (1985); *Pierce County Sch. Dist. v. Greene*, 185 Ga. App. 269, 363 S.E.2d 825 (1987); *Metheny v. State*, 197 Ga. App. 882, 400 S.E.2d 25 (1990); *Brannan v. State*, 261 Ga. 128, 401 S.E.2d 269 (1991); *Lattarulo v. State*, 261 Ga. 124, 401 S.E.2d 516 (1991); *Bailey v. Hall*, 199 Ga. App. 602, 405 S.E.2d 579 (1991); *Pryor v. Phillips*, 222 Ga. App. 116, 473 S.E.2d 535 (1996); *Conley v. State*, 281 Ga. App. 841, 637 S.E.2d 438 (2006); *Hite v. Anderson*, 284 Ga. App. 156, 643 S.E.2d 550 (2007); *Barron v. State*, 291 Ga. App. 494, 662 S.E.2d 285 (2008).

Alcohol Concentration

Blood to alcohol ratio. — Charges regarding the use of the blood to alcohol ratio have been held to be harmless so long as those charges are given in conjunction with a qualifying instruction regarding the inconclusiveness of the ratio. Therefore, the burden of proof is not shifted to the defendant. *Walker v. State*, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

Charging the statutory definition of alcohol concentration was not error since the trial court charged the jury that the jury could give the breath test results the weight that the jury deemed fit, including no weight at all. *Rindone v. State*, 210 Ga. App. 639, 437 S.E.2d 338 (1993).

Alcohol concentration. — Since the defendant was charged with a crime wherein the “alcohol concentration” of defendant’s blood was an element of the offense, and the trial court charged the jury on the statutory definition of “alcohol concentration,” the trial court did not err in so charging the jury on the definition of “alcohol concentration.” *Close v. State*, 195 Ga. App. 652, 394 S.E.2d 563 (1990).

Person “driving” vehicle while guiding vehicle down road. — Person has actual physical control of a vehicle which is unable to move under the vehicle’s own power while guiding the vehicle

down a road as the vehicle operates under the force of gravity. *Harris v. State*, 97 Ga. App. 495, 103 S.E.2d 443 (1958), overruled on other grounds, *New v. State*, 171 Ga. App. 392, 319 S.E.2d 542 (1984) and *Luke v. State*, 177 Ga. App. 518, 340 S.E.2d 30 (1986) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 10-13).

Explanation of test results by witness not necessary. — Testing officer’s failure to explain the officer’s testimony that the defendant’s test results were .121 and .116, in terms of the “alcohol concentration” definitions of O.C.G.A. § 40-1-1, did not require reversal since the officer also testified that the machine tested specifically for alcohol and the jury was properly instructed on statutory definitions. *Banks v. State*, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Evidence supports a verdict of drunken “driving” since, at the time the troopers arrived at the scene of the alleged crime, the defendant was sitting under the steering wheel of the automobile and attempting to get the car in gear, the motor of the automobile was running, and the automobile rolled backwards when the witness started to get out of the patrol car. *Echols v. State*, 104 Ga. App. 695, 122 S.E.2d 473 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 10-13).

Crosswalk

“Crosswalk” at other than intersection must be marked. — Acceptance of any definition of an unmarked “crosswalk” other than that in Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21, or holding that simply because people do cross, even “normally,” in order to get to a place of business on the opposite side of a crosswalk would, in effect, make the whole roadway a “crosswalk.” If there is to be one other than at the intersection, it must be marked in some manner so that motorists may know of it. *Wells v. Alderman*, 117 Ga. App. 724, 162 S.E.2d 18 (1968) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

A “T” intersection did not qualify as an unmarked crosswalk for purposes of a negligence suit brought by pedestrians who were struck at the intersection. *McKenzie v. Detenber*, 226 Ga. App. 742,

Crosswalk (Cont'd)

487 S.E.2d 497 (1997).

Highway

Meaning of "highway." — "Highways" are created by legislative authority by dedication, or by prescription. The construction of the term "highway," when used in a statute, depends upon the legislative intent, and no fixed rule in regard to the word's meaning can be given. *Powell v. Barker*, 96 Ga. App. 592, 101 S.E.2d 113 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Every thoroughfare which is used by the public, and, in the language of the English books, is common to all the king's subjects, is a "highway." *Powell v. Barker*, 96 Ga. App. 592, 101 S.E.2d 113 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Road which leads only to the residence of a single individual may be a "highway." *Powell v. Barker*, 96 Ga. App. 592, 101 S.E.2d 113 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Since the term "highway" meant the entire width between the boundary lines of every way publicly maintained when any part thereof was open to the use of the public for purposes of vehicular travel, the term "highway" included the city streets on which defendant was traveling when it was discovered by police that the defendant was driving without a license; thus, the defendant's conviction for that offense had to be upheld. *Scott v. State*, 254 Ga. App. 728, 563 S.E.2d 554 (2002).

Berm or shoulder not part of roadway. — O.C.G.A. § 40-1-1(53) defines the term "roadway" as "that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term 'roadway' shall refer to any such roadway separately, but not to all such roadways collectively." The statutory definition excludes the berm or shoulder from being a part of the roadway. *Nelson v. State*, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

Need for public invitation for highway opening. — Highway is not open for

travel until there has been extended to public an invitation, express or implied, to use the highway. When a highway is open for travel may, under certain circumstances, be a question of law for the court; on the other hand, cases may arise where it would be a question of fact for the jury to determine under all the circumstances of the particular case. *Powell v. Barker*, 96 Ga. App. 592, 101 S.E.2d 113 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Publicly maintained highway under construction and open to traffic "public highway." — For a highway under construction to be a "public highway," it would be necessary to show only that the highway was publicly maintained, and that the part in question was open for vehicular traffic. *Powell v. Barker*, 96 Ga. App. 592, 101 S.E.2d 113 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Intersection

Place where private way joins public road. — Area within which private driveway or private way joins with public road is not "intersection" as defined by law. *Howard v. Hall*, 112 Ga. App. 247, 145 S.E.2d 70 (1965) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Jury authorized to find drivers grossly negligent. — Under an application of the rules of law to the facts, the jury was authorized to find from the evidence adduced upon the trial, and the reasonable inferences to be drawn therefrom, that the two defendant drivers were grossly negligent in causing the plaintiff's injuries. *Lawrence v. Hayes*, 92 Ga. App. 778, 90 S.E.2d 102 (1955) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Motorcycle

Motorcycles taxed separately. — General Assembly, in providing license taxes, separated "motorcycles" from the general class of "motor vehicles." *Bullard v. Life & Cas. Ins. Co.*, 178 Ga. 673, 173 S.E. 855, answer conformed to, 49 Ga. App. 27, 174 S.E. 256 (1934).

Trail bike is a "motorcycle." *Addison v. Southern Guar. Ins. Co.*, 155 Ga. App.

536, 271 S.E.2d 674 (1980).

Motor Vehicle

Scope of definition. — Paragraph defining “motor vehicle” includes only those vehicles operated or drawn by their own self-propelled power. *Thompson v. Georgia Power Co.*, 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Applicability to tractor. — Tractor comes within the definition of a “motor vehicle” under O.C.G.A. § 40-1-1. *Browning v. State*, 207 Ga. App. 547, 428 S.E.2d 441 (1993).

Golf cart. — Since a golf cart was a “motorized vehicle” under O.C.G.A. § 40-1-1(33), (75), the defendant had to have a driver’s license when driving the golf cart on a highway; the motorized cart statutes, O.C.G.A. §§ 40-6-330 and 40-6-331(b), (c), authorized licensing of the vehicle, not the driver. *Coker v. State*, 261 Ga. App. 646, 583 S.E.2d 498 (2003).

Because: (1) O.C.G.A. § 40-6-391(a), by the statute’s plain language, applied to any moving vehicle, and, a golf cart was a “vehicle” within the meaning of O.C.G.A. § 40-1-1(75); (2) the defendant stipulated at trial to driving the golf cart in Fayette County, making such a “moving vehicle” within the scope of O.C.G.A. § 40-6-391(a), and to being under the influence of alcohol while doing so; and (3) under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia, whether on a street, highway, or private property, the defendant’s DUI conviction was upheld on appeal. *Simmons v. State*, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

Evidence regarding theft of a four-wheeler from a dealership was sufficient for a jury to determine that the four-wheeler fit within the definition of a self-propelled vehicle within O.C.G.A. § 40-1-1(33); further, the evidence supported defendant’s conviction for theft by taking a motor vehicle after a witness saw two men loading the four-wheeler into the back of a truck, the dealership’s door looked like the door was pried open or kicked in, and defendant and others were stopped with the four-wheeler, bolt cutters, and a crowbar in the back of the truck. *Norwood v. State*, 265 Ga. App. 862,

595 S.E.2d 537 (2004).

Named driver exclusion endorsement precluded coverage since the term “motor vehicle,” which does not include all-terrain vehicles, was limited to the policy provisions providing coverage, the language used in the endorsement encompassed the all-terrain vehicle involved in the accident, and since the insured exercised the insured’s right to reject uninsured motorist coverage for the named driver. *Fountain v. Atlanta Cas. Co.*, 204 Ga. App. 165, 419 S.E.2d 67 (1992).

Official Traffic-Control Devices

Turns made in compliance with “official traffic control devices.” — Turns should be made from the roadway, but, more particularly, in compliance with the patterns established by the markings (“official traffic control devices”) on the road. *State v. Williams*, 156 Ga. App. 813, 275 S.E.2d 133 (1980).

No-parking signs. — Properly erected no-parking sign within a municipality is an “official traffic-control device.” *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

Owner

Natural person, not business, found to be “owner” of vehicle. *Purcell v. Allstate Ins. Co.*, 168 Ga. App. 863, 310 S.E.2d 530 (1983).

Pedestrian

“Pedestrian” defined. — Defining “pedestrian” under motor vehicle accident insurance provisions involves an examination of the primary purpose or design of the vehicle involved in the accident. *Cotton States Mut. Ins. Co. v. Statiras*, 157 Ga. App. 169, 276 S.E.2d 853 (1981).

Rights of pedestrian and driver. — Pedestrian and person with an automobile each have the right to use the public highway; but the right of an operator of an automobile upon the highways is not superior to the right of the pedestrian, and it is the duty of each to exercise their right with due regard to the corresponding rights of the other. *Roseberry v. Freeman*, 97 Ga. App. 545, 103 S.E.2d 745 (1958)

Pedestrian (Cont'd)

(decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Duties of automobile driver and pedestrian. — Driver of an automobile is bound to use reasonable care and to anticipate the presence on the streets of other persons having equal rights with the driver to be there; and a pedestrian, when lawfully using the public highways, is not bound to be continually looking and listening to ascertain if auto cars are approaching, under the penalty that if the pedestrian fails to do so, and is injured, it must be conclusively presumed that the pedestrian was negligent. *Roseberry v. Freeman*, 97 Ga. App. 545, 103 S.E.2d 745 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 14-21).

Right of Way

"Right of way" construed. — At a particular time or place a pedestrian may not have the "right of way" to travel over or across the highway. *Roseberry v. Freeman*, 97 Ga. App. 545, 103 S.E.2d 745 (1958).

Pattern charges on yielding the right of way and the duty to yield when entering or crossing a roadway from a private road were proper since, although the defendant did not at first see the plaintiff approaching, the defendant continued into the roadway after the defendant saw the plaintiff. *Claxton v. Lee*, 229 Ga. App. 357, 494 S.E.2d 80 (1997).

School Bus

Common carrier for hire. — Bus otherwise being operated as a common

carrier for hire is not converted into a school bus simply because school children are incidental passengers thereon. *Metropolitan Atlanta Rapid Transit Auth. v. Tuck*, 163 Ga. App. 132, 292 S.E.2d 878 (1982).

Special Mobile Equipment

Excavator. — Caterpillar 977L Traxcavator does not fall under the definition of "motor vehicle" found either in O.C.G.A. § 10-1-31(a)(4) or general definition of "motor vehicle" under paragraph (29) (now paragraph (33)) of O.C.G.A. § 40-1-1 but does fit the definition of "special mobile equipment" under paragraph (54) (now paragraph (59)) of § 40-1-1. *Battle v. Yancey Bros. Co.*, 157 Ga. App. 277, 277 S.E.2d 280 (1981).

Landfill compactor. — Landfill compactor is not a "motor vehicle" as that term is defined in O.C.G.A. § 33-34-2. *Pate v. Turner County*, 162 Ga. App. 463, 291 S.E.2d 400 (1982).

Motor cranes propelled by the separate motor on a truck are not special mobile equipment within the meaning of paragraph (54) (now paragraph (59)) of O.C.G.A. § 40-1-1. *Citizens & S. Nat'l Bank v. Georgia Steel, Inc.*, 25 Bankr. 796 (Bankr. M.D. Ga. 1982).

Trailer. — Term "motor vehicle," as used in former Code 1933, § 68-101, did not include a trailer without motive power not hitched to or being drawn by a motor vehicle. *O'Steen v. Boone*, 117 Ga. App. 174, 160 S.E.2d 229 (1968) (see O.C.G.A. § 40-1-1).

OPINIONS OF THE ATTORNEY GENERAL**ANALYSIS****GENERAL CONSIDERATION****HIGHWAY****MOTOR VEHICLE****TRACTOR****TRAILER****VEHICLE**

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Nov.-Dec. Sess., p. 556, are included in the annotations for this Code section.

Highway

Reserving city street for officially sanctioned event. — City street which has been closed to the public for purposes of an officially sanctioned activity (such as a drag race) ceases to be a "highway" as defined by paragraph (16) (now paragraph (19)) of O.C.G.A. § 40-1-1. 1983 Op. Att'y Gen. No. U83-53.

Traffic enforcement by use of cameras. — Municipalities are not prohibited by Georgia's Constitution or laws from enacting ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U2000-7.

All-terrain vehicles operating on the highways of the State of Georgia are governed by the Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq. 2007 Op. Att'y Gen. No. 2007-3.

Motor Vehicle

Applicability to motor scooter. — Motor scooter came within the definition of a "motor vehicle" under former Code 1933, § 68-101. 1954-56 Op. Att'y Gen. p. 471 (see O.C.G.A. § 40-1-1).

Applicability to golf cart. — Golf cart was a vehicle other than a tractor, not operated upon a track, and propelled by other than muscular power; it thus fell within the definition of "motor vehicle" set out in former Code 1933, § 68-101; if the golf cart was to be operated upon a public road, the operator must comply with all registration, inspection, and equipment requirements. 1972 Op. Att'y Gen. No. U72-78 (see O.C.G.A. § 40-1-1).

Purchase by political subdivision of governmental license plate. — When the exclusive use and possession of a "motor vehicle" is donated to a municipality or political subdivision for use in a driver education program for a period of more than 30 days, the municipality or political subdivision is entitled to pur-

chase, for use on that vehicle, a governmental license plate. 1969 Op. Att'y Gen. No. 69-246.

State-owned vehicles. — Any state-owned vehicle, including maintenance or construction-type vehicles, comes within definition of term "motor vehicle." 1969 Op. Att'y Gen. No. 69-448.

Go-cart is a "motor vehicle," and the operator of a go-cart must be licensed; the go-cart must be registered, inspected annually, and equipped with headlights, stop lights, and turn signals. 1969 Op. Att'y Gen. No. 69-194.

Tractor

Neither four-wheel tanks nor trailers qualify as "tractors." — Since neither tanks which are mounted on four wheels and used to haul anhydrous ammonia (liquid fertilizer) over public highways nor four-wheel trailers used to haul cotton over public highways to farms can qualify as "tractors," the tanks must be registered and have license plates. 1965-66 Op. Att'y Gen. No. 66-149.

Trailer

Trailer cannot qualify for sales tax exemption under former Code 1933, § 91A-4503. 1980 Op. Att'y Gen. No. 80-164 (see O.C.G.A. § 48-8-3(32)).

Air compressor mounted on wheels and drawn by another vehicle is a "trailer." 1958-59 Op. Att'y Gen. p. 211.

Vehicle

Classification of a "vehicle" depends upon the object's use, rather than upon the method by which the owner is compensated for the use, or the ownership of the vehicle. 1954-56 Op. Att'y Gen. p. 484.

Both a truck and a trailer are included in the use of the word "vehicle." 1957 Op. Att'y Gen. p. 188.

"Log grapple loader" operated on public highway. — "Log grapple loader" is a truck body with a log loading machine mounted on its back, and the only time that it is used on a highway is in transporting it from one forest to another; if such a "vehicle" is to be operated on the public highways, it must be registered,

Vehicle (Cont'd)

licensed, and inspected in accordance with the motor vehicle laws. 1973 Op. Att'y Gen. No. U73-82.

Operation of construction equipment by habitual violator. — Driver declared to be a habitual violator and given notice as provided by law is not guilty of the offense of operating a vehicle after having been declared a habitual violator when the driver operates self-propelled road construction equipment which is not designed or used pri-

marily for the transportation of persons or property so long as such a vehicle is not operated on the highways of this state. 1990 Op. Att'y Gen. No. U90-14.

Responsibility for registering "vehicle" under permanent lease. — When a "vehicle" is under a permanent lease (for more than a 30-day period), the state may hold either the legal title holder or the lessee responsible for registration, but primary liability is upon the lessee-operator. 1960-61 Op. Att'y Gen. p. 305.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 1 et seq., 29, 90, 222 et seq., 304, 346. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 811. 31A Am. Jur. 2d, Explosions and Explosives, § 1. 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 1 et seq., 90. 54 Am. Jur. 2d, Mobile Homes and Trailer Parks, § 1. 65 Am. Jur. 2d, Railroads, §§ 2 et seq., 363. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 1.

C.J.S. — 35 C.J.S., Explosives, § 2. 60 C.J.S., Motor Vehicles, §§ 1 et seq., 55, 98 et seq., 164. 60A C.J.S., Motor Vehicles, §§ 819, 827, 839 et seq., 870, 871, 895, 896. 61 C.J.S., Motor Vehicles, §§ 949 et seq. 74 C.J.S., Railroads, § 1.

ALR. — Injury to one while coasting in the street, 20 ALR 1433; 109 ALR 941.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Chauffeur in general employment of owner as servant for time being of owner, or of borrower of car, 42 ALR 1446.

Liability for forcing trespasser from moving automobile, 58 ALR 617.

Motorcycle as within contract, statute, or ordinance in relation to motor cars, motor-driven cars, etc., 70 ALR 1253.

Applicability of regulations or rules governing vehicular traffic to driveways or other places not legal highways, 80 ALR 469.

Airplane as within terms "vehicle," "motor vehicle," etc., 165 ALR 916.

What is "motor vehicle" or the like within statute providing for constructive or substituted service of process on non-resident motorists, 48 ALR2d 1283.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 ALR2d 1146.

What is "motor vehicle" within automobile guest statute, 98 ALR2d 543.

Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 ALR3d 739.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 ALR4th 1117.

What is "temporary" building or structure within meaning of restrictive covenant, 49 ALR4th 1018.

Horseback riding or operation of horse-drawn vehicle as within drunk driving statute, 71 ALR4th 1129.

Validity, construction, and effect of statutes or ordinances forbidding automotive "cruising"—practice of driving repeatedly through loop of public roads through city, 87 ALR4th 1110.

Validity, construction, and application of "named driver exclusion" in automobile insurance policy, 33 ALR5th 121.

40-1-2. How horsepower determined.

The Society of Automotive Engineers horsepower rating formula is adopted as the standard for determining the horsepower of passenger-carrying vehicles. (Ga. L. 1927, p. 226, § 2; Code 1933, § 68-102; Ga. L. 1990, p. 2048, § 1.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 277, 311.

40-1-3. Requiring or permitting unlawful operation of vehicle.

It is unlawful for the owner or any other person employing or otherwise directing the driver of any vehicle to require or knowingly permit the operation of such vehicle upon a highway in any manner contrary to law. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 122; Ga. L. 1990, p. 2048, § 1.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770(1), are included in the annotations for this Code section.

"Automobile" defined. — Term "automobile" has a definite popular significance and is understood to refer to a wheeled vehicle, propelled by gasoline, steam, or electricity, and used for the transportation of persons or merchandise. *Carter v. State*, 12 Ga. App. 430, 78 S.E. 205 (1913) (decided under former Code 1910, § 1770(1)).

Words, "propelled by steam, gas, gasoline, electricity, or any other power than muscular," referred to the phrase "any other vehicle," and not to the word "automobile." *Carter v. State*, 12 Ga. App. 430, 78 S.E. 205 (1913) (decided under former Code 1910, § 1770(1)).

Former Code 1910, § 1770 included a motorcycle propelled by gasoline. *Bonds v. State*, 16 Ga. App. 401, 85 S.E. 629 (1915) (decided under former Code 1910, § 1770(1)).

Use of intoximeter results obtained from driver. — If the state wants to prosecute a party who allowed an intoxicated driver to operate an automobile in violation of the statute governing driving under the influence, the state can use the intoximeter results obtained from the accused operator only if the state can prove that the state's evidence meets the statutory requirements for admissibility under O.C.G.A. § 40-6-392. *Munda v. State*, 172 Ga. App. 857, 324 S.E.2d 799 (1984).

Standing to contest admissibility of intoximeter test. — Person charged with permitting another person to operate an automobile contrary to the law governing driving under the influence has standing to contest the admissibility of an intoximeter test under the statute governing the introduction of such evidence. *Munda v. State*, 172 Ga. App. 857, 324 S.E.2d 799 (1984).

Cited in *Beck v. Wade*, 100 Ga. App. 79, 110 S.E.2d 43 (1959); *Borochoff v. Russell*, 108 Ga. App. 266, 132 S.E.2d 861 (1963).

OPINIONS OF THE ATTORNEY GENERAL

Unsafe bus on highways for purpose other than repairs. — Once a school bus has been declared unsafe, a misdemeanor citation may be issued each time the bus is found moving on the highways for purposes other than effecting the requisite repairs. 1974 Op. Att’y Gen. No. 74-31.

Issuance of citation to persons other than driver of unsafe vehicle. — Cita-

tions may be issued not only to the driver of an unsafe vehicle, but also to any person who knew the vehicle to be in an unsafe condition and yet ordered or directed the driver to take the vehicle upon the highways, and to the owner of the vehicle if the owner knew of the unsafe condition and yet permitted continued operation of the vehicle. 1974 Op. Att’y Gen. No. 74-31.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 223, 236, 268, 285, 286.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1504 et seq., 1639, 1640, 1751 et seq.

40-1-4. Stickers, decals, or emblems containing profane or lewd words describing sexual acts, excretory functions, or parts of the human body.

No person owning, operating, or using a motor vehicle in this state shall knowingly affix or attach to any part of such motor vehicle any sticker, decal, emblem, or other device containing profane or lewd words describing sexual acts, excretory functions, or parts of the human body. Any person who violates any part of this Code section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$100.00. (Code 1981, § 40-1-4, enacted by Ga. L. 1988, p. 1561, § 1; Ga. L. 1990, p. 2048, § 1.)

JUDICIAL DECISIONS

Section unconstitutional. — O.C.G.A. § 40-1-4 unconstitutionally restricts freedom of expression as guaranteed by the First and Fourteenth Amend-

ments of the United States Constitution and by the Georgia Constitution. *Cunningham v. State*, 260 Ga. 827, 400 S.E.2d 916 (1991).

40-1-5. Disclosure by dealer of damage to new motor vehicles.

(a) As used in this Code section, the terms “dealer,” “distributor,” “manufacturer,” and “new motor vehicle” shall have the same meaning as set forth in Code Section 40-2-39.

(b) Except as provided in this subsection and in subsection (c) of this Code section, prior to the sale of a new motor vehicle, a dealer must disclose to the buyer any damage which has occurred to the vehicle of which the dealer has actual knowledge and which costs more than 5 percent of the manufacturer’s suggested retail price to repair. Prior to

the sale of a new motor vehicle, a dealer must also disclose to the buyer any damage which has occurred to the paint of which the dealer has actual knowledge and which costs more than \$500.00 to repair. Damages shall be calculated at the actual cost of such repair.

(c) Notwithstanding anything to the contrary in subsection (b) of this Code section, in calculating the amount of damage for purposes of disclosure under subsection (b) of this Code section, a dealer shall not be required to take into account nor shall a dealer be required to disclose damage to glass, tires, wheels, bumpers, radio, or in-dash audio equipment, regardless of cost, so long as the item is replaced with original or reasonably comparable equipment.

(d) Prior to the delivery of a new motor vehicle, each manufacturer, distributor, carrier, or motor vehicle importer must disclose to the dealer any damage which has occurred to the vehicle of which the manufacturer, distributor, carrier, or importer has actual knowledge and which is required to be disclosed to a buyer under subsections (b) and (c) of this Code section. If a manufacturer, distributor, carrier, or motor vehicle importer fails to make any disclosure required by this subsection, then such shall be liable to the dealer for any liability imposed on such dealer for a failure on the part of the dealer to comply with the requirements of this Code section.

(e) Prior to the delivery of a new motor vehicle, each manufacturer, carrier, or motor vehicle importer must disclose to the distributor any damage which has occurred to the vehicle of which the manufacturer, carrier, or importer has actual knowledge and which is required to be disclosed to a buyer under subsections (b) and (c) of this Code section. If a manufacturer, carrier, or motor vehicle importer fails to make any disclosure required by this subsection, then such shall be liable to the distributor for any liability imposed on such distributor for a failure on the part of the distributor to comply with the requirements of this Code section.

(f) If disclosure is not required under this Code section, a buyer may not revoke or rescind a sales contract, and relief may not be sought under this or any other provision of this Code, including Part 2 of Article 15 of Chapter 1 of Title 10 due to the fact that the new motor vehicle was damaged and repaired prior to the sale.

(g) A violation of this Code section shall be a per se violation of Code Section 10-1-393, and the penalties, procedures, and remedies applicable to violations of Code Section 10-1-393 shall be applicable to a violation of this Code section. (Code 1981, § 40-1-5, enacted by Ga. L. 1990, p. 1657, § 1; Ga. L. 1994, p. 97, § 40.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “40-2-39” was substituted for “40-2-36.1” in subsection (a), since Code Section 40-2-36.1 was

redesignated as Code Section 40-2-39 by Ga. L. 1990, p. 2048, § 2.

Law reviews. — For note on 1990

enactment of this Code section, see 7 Ga. St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

Demonstrator qualifies as a “new motor vehicle” under O.C.G.A. § 40-1-5. *Neal Pope, Inc. v. Garlington*, 245 Ga. App. 49, 537 S.E.2d 179 (2000).

Repairs that are necessary to fix damage to a vehicle, regardless of whether those repairs involve replacing damaged car parts, are included in the definition of “repair.” *Neal Pope, Inc. v. Garlington*, 245 Ga. App. 49, 537 S.E.2d 179 (2000).

Repair costs less than five percent of retail price. — When the dealer’s undisputed actual repair costs were less than five percent of the manufacturer’s suggested retail price of the car, the dealer was not required to disclose the damage to

plaintiff prior to the sale and O.C.G.A. § 40-1-5(f) applied to bar relief to plaintiff. *Nall v. Bill Heard Chevrolet Co.*, 238 Ga. App. 365, 518 S.E.2d 164 (1999).

Repair costs more than five percent of retail price. — Because the undisputed facts showed that repairs to the car which were performed before the sale totaled more than five percent of the original manufacturer’s suggested retail price and that the dealer’s salesperson said that there had been no problems with the car, grant of summary judgment on the plaintiff’s Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., claim was proper. *Neal Pope, Inc. v. Garlington*, 245 Ga. App. 49, 537 S.E.2d 179 (2000).

40-1-6. Uniforms of law enforcement officers.

Uniformed law enforcement officers of an agency who are assigned routinely or primarily to traffic law enforcement or other traffic safety duties on the roadways or highways of this state shall wear the same type uniform as other members of the assigned division of such officers’ respective agencies. Officers assigned to special operations activities may wear other identifiable uniforms or other clothing appropriate to an operation upon approval of the sheriff, chief of police, or other agency head. An otherwise lawful arrest shall not be invalidated or in any manner affected by failure to comply with this Code section. (Code 1981, § 40-1-6, enacted by Ga. L. 2000, p. 1313, § 1.)

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1519.

40-1-7. Blue light required for officers enforcing traffic; exception.

Whenever pursuing a person in violation of a traffic related offense, a uniformed law enforcement officer who is assigned routinely or primarily to traffic law enforcement or other traffic safety duties on the roadways or highways of this state must place a visible blue light on the roof of his or her vehicle if such vehicle is not equipped with permanent exterior mounted roof blue lights; provided, however, that the provi-

sions of this Code section shall not apply to law enforcement officers operating vehicles manufactured prior to 2001. This Code section shall not apply to any officer assigned to special operations activities or responding to an immediate threat to public safety as a result of an accident or other emergency. This Code section shall not apply to vehicles of the Georgia State Patrol or of a sheriff's office or police department which office or police department provides law enforcement services by certified peace officers 24 hours a day, seven days a week where the vehicles are marked in accordance with Code Section 40-8-91, with flashing or revolving colored lights visible under normal atmospheric conditions for a distance of 500 feet from the front and rear of such vehicle, and which also has an illuminating agency identifier reasonably visible to a driver of a vehicle subject to a traffic stop; provided, however, that the Georgia State Patrol shall not be permitted to have more than two vehicles per post without such exterior mounted roof lights; and provided, further, that a sheriff's office or police department shall not be permitted to have more than one vehicle per agency without such exterior mounted roof lights. An otherwise lawful arrest shall not be invalidated or in any manner affected by failure to comply with this Code section. (Code 1981, § 40-1-7, enacted by Ga. L. 2000, p. 1313, § 1; Ga. L. 2006, p. 231, § 1/SB 64; Ga. L. 2007, p. 47, § 40/SB 103.)

Administrative rules and regulations. — Flashing and Revolving Lights on Motor Vehicles, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-11.

40-1-8. Definitions; safe operations of motor carriers and commercial motor vehicles; civil penalties; operation of out-of-service vehicles; criminal penalties.

(a) As used in this Code section, the term:

(1) "Commissioner" means the commissioner of public safety.

(2) "Department" means the Department of Public Safety.

(3) "Present regulations" means the regulations promulgated under 49 C.F.R. in force and effect on January 1, 2014.

(b) The commissioner shall have the authority to promulgate rules and regulations for the safe operation of motor carriers, the safe operation of commercial motor vehicles and drivers, and the safe transportation of hazardous materials. Any such rules and regulations promulgated or deemed necessary by the commissioner shall include, but are not limited to, the following:

(1) Every commercial motor vehicle and all parts thereof shall be maintained in a safe condition at all times; and the lights, brakes,

equipment, and all other parts or accessories shall meet such safety requirements designated by present regulations under Parts 393 and 396;

(2) Every driver employed to operate a motor vehicle for a motor carrier shall:

(A) Be at least 18 years of age to operate a motor vehicle for a motor carrier intrastate and at least 21 years of age to operate a motor vehicle for a motor carrier interstate;

(B) Meet the qualification requirements the commissioner shall from time to time promulgate;

(C) Be of temperate habits and good moral character;

(D) Possess a valid driver's license;

(E) Not use or possess prohibited drugs or alcohol while on duty; and

(F) Be fully competent and sufficiently rested to operate the motor vehicle under his or her charge;

(3) Accidents arising from or in connection with the operation of commercial motor vehicles shall be reported to the commissioner of transportation in such detail and in such manner as the commissioner of transportation may require;

(4) The commissioner shall require each commercial motor vehicle to have attached such distinctive markings as shall be adopted by the commissioner. Such identification requirements shall comply with the applicable provisions of the federal Unified Carrier Registration Act of 2005; and

(5) The commissioner shall provide distinctive rules for the transportation of unmanufactured forest products in intrastate commerce to be designated the "Georgia Forest Products Trucking Rules."

(c)(1) Regulations governing the safe operations of motor carriers, commercial motor vehicles and drivers, and the safe transportation of hazardous materials may be adopted by administrative order, including, but not limited to, by referencing compatible federal regulations or standards without compliance with the procedural requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," provided that such federal regulations or standards shall be maintained on file by the department and made available for inspection and copying by the public, by means including, but not limited to, posting on the department's Internet site. The commissioner may comply with the filing requirements of Chapter 13 of Title 50 by filing with the office of the Secretary of State the name and designation of

such rules, regulations, standards, and orders. The courts shall take judicial notice of rules, regulations, standards, or orders so adopted or published.

(2) Rules, regulations, or orders previously adopted, issued, or promulgated pursuant to the provisions of Chapter 7 or 11 of Title 46 in effect on June 30, 2011, shall remain in full force and effect until such time as the commissioner of public safety adopts, issues, or promulgates new rules, regulations, or orders pursuant to the provisions of this Code section.

(d)(1) The commissioner may, pursuant to rule or regulation, specify and impose civil monetary penalties for violations of laws, rules, and regulations relating to driver and motor carrier safety and transportation of hazardous materials. Except as may be hereafter authorized by law, the maximum amount of any such monetary penalty shall not exceed the maximum penalty authorized by law or rule or regulation for the same violation immediately prior to July 1, 2005.

(2) A cause of action for the collection of a penalty imposed pursuant to this subsection may be brought in the superior court of the county where the principal place of business of the penalized company is located or in the superior court of the county where the action giving rise to the penalty occurred.

(e) The commissioner is authorized to adopt such rules and orders as he or she may deem necessary in the enforcement of this Code section. Such rules and orders shall have the same dignity and standing as if such rules and orders were specifically provided in this Code section. The commissioner is authorized to establish such exceptions or exemptions from the requirements of this Code section, as he or she shall deem appropriate, consistent with any federal program requirements, and consistent with the protection of the public health, safety, and welfare.

(f)(1) The commissioner may designate members of the department, pursuant to Article 5 of Chapter 2 of Title 35, to perform regulatory compliance inspections. Members of county, municipal, campus, and other state agencies may be designated by the commissioner to perform regulatory compliance inspections only of vehicles, drivers, and cargo in operation, and may only enforce the provisions of rules and regulations promulgated under this Code section or Article 2 of this chapter subject to the provisions of a valid agreement between the commissioner and the county, municipal, campus, or other state agency.

(2) Unless designated and authorized by the commissioner, no members of county, municipal, campus, and other state agencies may perform regulatory compliance inspections.

(g) No person shall drive or operate, or cause the operation of, a vehicle in violation of an out-of-service order. As used in this subsection, the term “out-of-service order” means a temporary prohibition against operating as a motor carrier or driving or moving a vehicle, freight container or any cargo thereon, or any package containing a hazardous material.

(h) Unless otherwise provided by law, a motor carrier or operator of a commercial motor vehicle shall comply with present regulations as follows:

(1) Motor carrier safety standards found in 49 C.F.R. Part 391;

(2) Motor carrier safety standards found in 49 C.F.R. Part 392, including but not limited to the seatbelt usage requirements in 49 C.F.R. Section 392.16; and

(3) Hours of service and record of duty status requirements of 49 C.F.R. Part 395.

(i) A person failing to comply with the requirements of paragraph (2) of subsection (h) of this Code section shall be guilty of the misdemeanor offense of failure to wear a seat safety belt while operating a commercial motor vehicle and, upon conviction thereof, shall be fined not more than \$50.00 but shall not be subject to imprisonment. The costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. No points shall be added pursuant to Code Section 40-5-57 and no additional fines or penalties shall be imposed.

(j) Every officer, agent, or employee of any corporation and every person who violates or fails to comply with this Code section or any order, rule, or regulation adopted pursuant to this Code section, or who procures, aids, or abets a violation of this Code section or such rule or regulation, shall be guilty of a misdemeanor. Misdemeanor violations of this Code section may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of this title. (Code 1981, § 40-1-8, enacted by Ga. L. 2011, p. 479, § 9/HB 112; Ga. L. 2013, p. 838, § 1/HB 323; Ga. L. 2014, p. 807, § 2/HB 753.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of paragraph (b)(2) for the former provisions, which read: “Every driver employed to operate a motor vehicle for a motor carrier shall be at least 18 years of age, meet the qualification requirements the commissioner shall from time to time promulgate, be of temperate habits and good moral character, possess a valid driver’s license, not use or possess prohibited

drugs or alcohol while on duty, and be fully competent and sufficiently rested to operate the motor vehicle under his or her charge;”; substituted “federal” for “Federal” in the second sentence of paragraph (b)(4); designated the existing provisions of subsection (d) as paragraph (d)(1) and added paragraph (d)(2); inserted a comma in the first sentence of subsection (f); added subsections (h) and (i); and redesignated former subsection (h) as present

subsection (j). See editor's note for applicability.

The 2014 amendment, effective July 1, 2014, added paragraph (a)(3); substituted the present provisions of paragraph (b)(1) for the former provisions, which read: "Every commercial motor vehicle and all parts thereof shall be maintained in a safe condition at all times; and the lights, brakes, and equipment shall meet such safety requirements as the commissioner shall from time to time promulgate;"; substituted "with present regulations as follows" for "with the" at the end of the introductory paragraph of subsection (h); and substituted the present pro-

visions of paragraph (h)(2) for the former provisions, which read: "Seatbelt usage requirements found in 49 C.F.R. Section 392.16; and".

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

Administrative rules and regulations. — Rules of General Applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 40-1-8 do not, at this time, appear to be

offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

ARTICLE 2

TRANSPORTATION OF HAZARDOUS MATERIALS

Editor's notes. — This article is comparable to former O.C.G.A. T. 46, C. 11, which was repealed by Ga. L. 2011, p. 479, § 25.

Administrative rules and regula-

tions. — Motor Carrier Safety Rules, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Public Service Commission, Transportation, Chapter 515-16-4.

40-1-20. Short title.

This article shall be known and may be cited as the "Transportation of Hazardous Materials Act." (Code 1981, § 40-1-20, enacted by Ga. L. 2011, p. 479, § 10/HB 112.)

40-1-21. Safe transportation of hazardous materials within state.

The General Assembly finds that the transportation of hazardous materials on the public roads of this state presents a unique and potentially catastrophic hazard to the public health, safety, and welfare of the people of Georgia and that the protection of the public health, safety, and welfare and the secure transportation of hazardous materials requires control and close regulation of such transportation to minimize that hazard and to that end this article is enacted. This is a remedial law and shall be liberally construed. The Department of Public Safety is designated as the agency to implement and enforce this

article. (Code 1981, § 40-1-21, enacted by Ga. L. 2011, p. 479, § 10/HB 112.)

40-1-22. Definitions.

As used in this article, the term:

(1) “Anhydrous ammonia” means the materials identified as “ammonia, anhydrous,” or “ammonia solutions with more than 50 percent ammonia and relative density less than 0.880 at 15 degrees Centigrade in water,” in federal hazardous materials regulations contained in Title 49 C.F.R.

(2) “C.F.R.” means the United States Code of Federal Regulations, as it may be amended from time to time in the Federal Register.

(3) “Commissioner” means the commissioner of public safety.

(4) “Department” means the Department of Public Safety.

(5) “Liquefied natural gas” or “LNG” means methane or natural gas in the form of a cryogenic or refrigerated liquid, as identified in federal hazardous materials regulations contained in Title 49 C.F.R.

(6) “Permit” means an instrument of whatever character or nature including, but not limited to, electronic format, issued by the department pursuant to this article.

(7) “Person,” in addition to the meaning provided in paragraph (43) of Code Section 40-1-1, means and includes any individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency or instrumentality of the United States government, or any other entity and includes any officer, agent, or employee of any of the above, who offers, ships, or carries a hazardous material in the furtherance of a commercial or business enterprise, whether or not such transportation is for-hire, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages designed, used, or intended for the transportation of hazardous materials.

(8) “Polychlorinated biphenyl” or “PCB” has the same meaning as the material identified in federal hazardous materials regulations contained in Title 49 C.F.R.

(9) “Radioactive material” has the same meaning as the term is used in federal hazardous materials regulations contained in Title 49 C.F.R.

(10) “Regulatory compliance inspection” means the examination of facilities, property, buildings, vehicles, equipment, drivers, employees, cargo, packaging, records, books, or supporting documentation

kept or required to be kept in the normal course of offering or transporting hazardous materials, or in the normal course of manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing packages designed, used, or intended for the transportation of hazardous materials.

(11) "Shipper" means any person who arranges for, provides for, solicits a carrier for, consigns to a carrier for, or contracts with a carrier for shipment or transport of goods, property, or persons. The terms "shipper" and "offeror" are synonymous. (Code 1981, § 40-1-22, enacted by Ga. L. 2011, p. 479, § 10/HB 112.)

40-1-23. Regulatory compliance inspections; notification; contacts with state; permit required for transporting materials; escorts or inspections; exceptions; recovery for damage or discharge; civil monetary penalties; routing agencies; adoption of regulations.

(a) Notwithstanding any other provision of law to the contrary, any person transporting, shipping, or offering for transportation hazardous material on the public roads of this state shall be subject to the requirements of this article. Persons who ship, offer, transport, or store incidental to transportation hazardous materials, or who manufacture, fabricate, mark, maintain, recondition, repair, or test packages used or intended for the transportation of hazardous materials, shall be deemed to have given consent to regulatory compliance inspections.

(b) No person, including the state or any agency thereof, shall transport hazardous material in, to, or through this state on the public roads of this state, whether or not the hazardous material is for delivery in this state and whether or not the transportation originated in this state; nor shall any person deliver in this state any hazardous material to any person for transportation; nor shall any such person accept any hazardous material for transportation in this state without compliance with the following requirements: such materials shall be packaged, marked, labeled, handled, loaded, unloaded, stored, detained, transported, placarded, certified, secured, and monitored in compliance with rules and regulations promulgated by the commissioner pursuant to this article and consistent with federal law. Compliance with such rules and regulations shall be in addition to and supplemental of other regulations of the United States Department of Energy, United States Department of Transportation, United States Nuclear Regulatory Commission, Georgia Department of Natural Resources, and state fire marshal, applicable to such persons.

(c)(1) The commissioner shall promulgate rules and regulations such that no person shall arrange for the transportation of or cause to be

transported in, to, or through this state on the public roads of this state any hazardous material unless such person shall notify the commissioner or his or her designee in accordance with such rules and regulations; provided, however, that such notification requirements shall comply with applicable federal hazardous materials transportation law.

(2) Prior to the transport of spent nuclear fuel or high-level radioactive waste, as those terms are defined in 42 U.S.C. Chapter 108 as amended by the Federal Nuclear Waste Policy Act of 1982, the shipper shall notify the commissioner or his or her designee in the manner required by Title 10 C.F.R. Part 71 or Part 73.

(d) Knowledge by a shipper that a carrier proposes to transport hazardous material in or through this state on the public roads of this state shall be sufficient contact with this state to subject such shipper to the jurisdiction of the commissioner and the courts of this state with respect to such transport.

(e)(1) No transportation of hazardous material shall take place in or through this state until the commissioner or his or her designee issues a permit authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles which carry hazardous materials. The commissioner or his or her designee may require changes in the proposed dates, times, routes, detention, holding, or storage of such materials during transport as necessary to maximize protection of the public health, safety, welfare, or the environment. The commissioner is authorized to promulgate reasonable rules and regulations which are necessary or desirable in governing the issuance of permits, provided that such rules and regulations are not in conflict with other provisions of law.

(2) Notwithstanding any provision of law to the contrary, pursuant to uniform permitting provisions of Federal Hazardous Materials Law, 49 U.S.C. Section 5119, the commissioner is authorized to adopt rules and regulations to bring state regulations into compliance with said federal law.

(f) Every such permit and all other documentation required by the commissioner shall be carried in the vehicles or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer, firefighter, emergency responder, or employee of the department who has been given enforcement authority by the commissioner.

(g) For just cause, including, but not limited to, repeated and consistent past violations, the commissioner may refuse to issue or may cancel, suspend, or revoke the permit of an applicant or permittee.

(h)(1) The commissioner or the official designated by the commissioner, pursuant to this Code section and the rules and regulations

developed by the commissioner, may issue annual permits which shall allow vehicles transporting hazardous materials to be operated on the public roads of this state for 12 months from the date such permit is issued.

(2) The commissioner or the official designated by the commissioner, pursuant to this Code section and the rules and regulations developed by the commissioner, may issue a single-trip permit to any vehicle.

(3) Pursuant to this article, the commissioner may charge a fee for the issuance of such permits and may develop and adopt an apportionment schedule for fees to be established by rules and regulations promulgated by the commissioner. The fee for the issuance of an annual trip permit shall be not more than \$100.00.

(i) The commissioner may arrange for escorts or inspections which comply with Code Section 35-2-56 or 35-2-101.

(j) For purposes of this article, the commissioner is expressly authorized to contract with any other state or local agency or department to perform any activities necessary to implement this article. Enforcement of this article and any rules, regulations, or orders promulgated, adopted, or issued hereunder shall be the sole province of the department and those entities the commissioner authorizes in writing, except for provisions relating to anhydrous ammonia.

(k)(1) Notwithstanding any other provisions of this article, the commissioner is authorized to establish such exceptions or exemptions from the requirements of this article, or any provision hereof, for such kinds, quantities, types, or shipments of hazardous materials as he or she shall deem appropriate, consistent with the protection of the public health, safety, and welfare.

(2) Specifically, but without limitation, the commissioner shall continue in force the agricultural exceptions in 49 C.F.R. Section 173.5, and the tank exceptions in 49 C.F.R. Section 173.8, as originally adopted in Public Service Commission Appendix "A" File MCA 1-3, Docket No. 16632-M, effective June 1, 1998.

(l) This article shall not apply to the transportation, delivery, or acceptance for delivery of radioactive materials inside the confines of a single contiguous authorized location of use of any person authorized to use, possess, transport, deliver, or store radioactive materials by the Department of Natural Resources pursuant to Chapter 13 of Title 31 or by the United States Nuclear Regulatory Commission; nor shall this article apply to the transportation, delivery, or acceptance for transportation of radioactive materials under the direction or supervision of the United States Nuclear Regulatory Commission, United States Depart-

ment of Energy, United States Department of Defense, or other federal agency authorized to possess or transport such material where such transportation, delivery, or acceptance for transportation is escorted by personnel designated by or under the authority of those agencies.

(m) This article shall not apply to interstate pipeline facilities which are subject to the jurisdiction of the United States Department of Transportation under the Natural Gas Pipeline Safety Act of 1968.

(n)(1) In the event of any damage to state property or any discharge of hazardous materials from the authorized shipping package or container or any threat of such discharge which results from the transportation, storage, holding, detention, delivery for transportation, or acceptance for transportation of hazardous materials in this state, the state may recover from any shipper, carrier, bailor, bailee, or any other person responsible for such storage, transportation, holding, detention, delivery, or acceptance all costs incurred by the state in the reparation of the damage and all costs incurred in the prevention, abatement, or removal of any such discharge or threatened discharge, including reasonable attorney's fees incurred with respect to recovery.

(2) The commissioner is expressly authorized to charge reasonable fees for time, equipment, materials, and supplies used or incurred by the department in the implementation of this article.

(3) The commissioner may issue civil penalties against any person found in violation of this article or any regulations promulgated or adopted for the safe and secure transportation of hazardous materials. Such penalties shall not exceed the limits established by 49 U.S.C. Chapter 51.

(o) Any person, firm, or corporation transporting methamphetamine, amphetamine, any mixture containing either methamphetamine or amphetamine, anhydrous ammonia, or any mixture containing anhydrous ammonia, shall be subject to all rules and regulations promulgated by the commissioner pursuant to this article governing the safe operation of motor vehicles and drivers and the safe transportation of hazardous materials.

(p) Notwithstanding the provisions of this Code section, the commissioner may impose civil monetary penalties in an amount not to exceed the maximum amounts for penalties established by 49 U.S.C. Chapter 51 for each violation of any rules and regulations promulgated pursuant to this article with respect to persons transporting methamphetamine, amphetamine, any mixture containing either methamphetamine or amphetamine, anhydrous ammonia, or any mixture containing anhydrous ammonia.

(q) The department is designated as the routing agency as defined in Title 49 C.F.R. Part 397, Subpart E. Routing determinations for

hazardous materials shall be made in accordance with the provisions of Federal Hazardous Materials Law, 49 U.S.C. Section 5112. The commissioner or his or her designee shall consult with Georgia Department of Transportation, Georgia Department of Natural Resources, Georgia Emergency Management Agency, Georgia Department of Homeland Security, or other agencies as necessary to carry out these responsibilities.

(r) Drivers who transport hazardous materials shall be trained at least to the minimum standards required by federal law. Upon request by the commissioner, proof of such federally required driver training shall be made available to the commissioner or his or her staff.

(s) For the transportation of spent nuclear fuel, high-level radioactive waste, and other hazardous materials, the commissioner may take action to ensure that motor vehicles, drivers, and packages used in such transportation have been inspected to show compliance with the federal motor carrier safety regulations and federal hazardous materials regulations, and compatible state regulations adopted pursuant to this article.

(t) Notwithstanding any other provisions of law, a bond or indemnity insurance required of carriers shall be established by rules and regulations of the commissioner and shall for all persons subject to this article, whether intrastate or interstate carriers, be at least in the maximum amount or amounts authorized or required by federal law or regulations.

(u) No person shall transport or cause the transportation of hazardous materials in violation of an out-of-service order.

(v) In addition to any other liability imposed by law, any person who violates or fails to comply with any provision of this article, or any rule, regulation, or order promulgated, adopted, or issued hereunder, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of this title.

(w)(1) The commissioner is authorized and empowered to adopt, promulgate, amend, repeal, or modify such standards, rules, and regulations and to issue such orders, authorizations, or amendments or modifications thereof as are necessary to implement this article. Any standards, rules, or regulations adopted pursuant to this article, if consistent with the applicable laws relating to adoption of such standards, rules, or regulations, shall have the force and effect of law. Any such rules and regulations shall be compatible with federal motor carrier safety regulations and federal hazardous materials regulations in Title 49 C.F.R.

(2) Regulations governing the safe operations of motor carriers, commercial motor vehicles, and drivers and the safe and secure

transportation of hazardous materials may be adopted by administrative order, including, but not limited to, referencing compatible federal regulations or standards without compliance with the procedural requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," provided that such compatible federal regulations or standards shall be maintained on file by the department and made available for inspection and copying by the public, by means including, but not limited to, posting on the department's Internet site. The commissioner of public safety may comply with the filing requirements of Chapter 13 of Title 50 by filing with the office of the Secretary of State merely the name and designation of such rules, regulations, standards, and orders. The courts shall take judicial notice of rules, regulations, standards, or orders so adopted or published.

(3) Rules, regulations, or orders previously adopted, issued, or promulgated pursuant to the provisions of Chapter 7 or 11 of Title 46 in effect on June 30, 2011, shall remain in full force and effect until such time as the commissioner adopts, issues, or promulgates new rules, regulations, or orders pursuant to the provisions of this article.

(4) The department shall, to the extent practicable, engage in education, outreach, and customer service activities to reach persons and entities affected by these regulations and to assist the competitiveness of Georgia citizens and businesses engaged in regulated activities. (Code 1981, § 40-1-23, enacted by Ga. L. 2011, p. 479, § 10/HB 112.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses printing is required. 2011 Op. Att'y Gen. arising from a violation of O.C.G.A. No. 11-5.
§ 40-1-23 are offenses for which finger-

40-1-24. Enforcement; use of funds; regulatory compliance inspections by others; examination of facilities.

(a) The commissioner is authorized to employ such persons as may be necessary, in the discretion of the commissioner, for the proper enforcement of this article, as provided for in this article and Chapter 2 of Title 35. It is the intent of the General Assembly, subject to the appropriations process, that funds derived under this article shall be used to further the Department of Public Safety's hazardous materials transportation safety programs; provided, however, that the department shall retain those funds derived specifically for inspection or escort.

(b) The commissioner is vested with police powers and authority to designate, deputize, and delegate to employees of the commissioner the

necessary authority to enforce this article, including the power to stop and inspect all motor vehicles using the public highways and to enter upon and inspect shipper and carrier facilities for purposes of determining whether such vehicles and facilities have complied with and are complying with the provisions of this article and all other laws regulating the use of the public highways by motor vehicles, and to arrest all persons found in violation thereof, and to issue out-of-service orders to carriers, vehicles, and drivers in accordance with criteria which shall be established or adopted by the commissioner.

(c) As designated by the commissioner, by way of agreement, members of county, municipal, campus, and other state agencies may only perform regulatory compliance inspections of vehicles, drivers, and cargo in operation, and enforce the provisions of this article and rules and regulations promulgated hereunder subject to the terms and conditions of that agreement.

(d) The commissioner is vested with powers to designate, deputize, and delegate to employees of the department the necessary authority to enter upon and examine the facilities where hazardous materials are filled, offered, shipped, or stored incidental to transportation, or where packages are manufactured, fabricated, marked, maintained, reconditioned, repaired, or tested for purposes of regulatory compliance inspections for determining compliance with this article and other laws the administration or enforcement of which is the responsibility of the department. (Code 1981, § 40-1-24, enacted by Ga. L. 2011, p. 479, § 10/HB 112.)

40-1-25. Severability.

In the event that any section, paragraph, or other part of this article, or any requirement thereunder, or any rule, regulation, or order of the commissioner promulgated hereunder, is found to be preempted by federal law, or otherwise found to be improper, null or otherwise void, all other requirements not so preempted or otherwise so found shall remain in full force and effect. (Code 1981, § 40-1-25, enacted by Ga. L. 2011, p. 479, § 10/HB 112.)

ARTICLE 3

MOTOR CARRIERS

Effective date. — This article became effective July 1, 2012.

Administrative rules and regulations. — General Provisions, Official

Compilation of the Rules and Regulations of the State of Georgia, Georgia Public Service Commission, Transportation, Chapter 515-16-5.

PART 1

GEORGIA MOTOR CARRIER ACT OF 2012

40-1-50. Short title.

This article shall be known and may be cited as the “Georgia Motor Carrier Act of 2012.” (Code 1981, § 40-1-50, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

Cross references. — Standard of care to be observed by common carriers generally, § 46-9-1. Creation of Railway Passenger Service Corridor System, T. 46, C. 8A. Road tax on motor carriers, § 48-9-30 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-50 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att’y Gen. No. 12-6.

40-1-51. Legislative findings; construction.

The General Assembly finds that the for-hire transportation of persons and property are a privilege that require close regulation and control to protect public welfare, provide for a competitive business environment, and provide for consumer protection. To that end, the provisions of this article are enacted. This is a remedial law and shall be liberally construed. The Department of Public Safety is designated as the agency to implement and enforce this article. Exceptions contained in this article shall have no effect on the applicability of any other provision of law applicable to motor vehicles, commercial motor vehicles, operators of motor vehicles, or carrier operations. (Code 1981, § 40-1-51, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-51 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att’y Gen. No. 12-6.

40-1-52. Establishment of Motor Carrier Compliance Division.

There is created and established a division within the Department of Public Safety to be known as the Motor Carrier Compliance Division which shall include a section designated the Regulatory Compliance Section. Except as provided in Chapter 2 of Title 35, the members of the Motor Carrier Compliance Division shall be known and designated as law enforcement officers. The Regulatory Compliance Section shall be responsible for the regulation of the operation of motor carriers and

limousine carriers in accordance with this article, Code Section 40-1-8, and Article 2 of this chapter. (Code 1981, § 40-1-52, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 2/HB 323.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: "There is created and established a division within the Department of Public Safety to be known as the Motor Carrier Compliance Division. The Motor Carrier Compliance Division shall consist of two sections, the Motor Carrier Compliance Enforcement Section and the Motor Carrier Regulation Compliance Section. Except as provided in Chapter 2 of Title 35, the members of the Motor Carrier Compliance Enforcement Section shall be known and designated as law enforcement officers. The Motor Carrier

Regulation Compliance Section shall be responsible for the regulation of the operation of motor carriers and limousine carriers in accordance with this article and motor carrier safety and the transportation of hazardous materials as provided in Code Section 40-1-8 and Article 2 of this chapter." See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-52 are offenses for which those

charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-53. "Department" defined; methods of enforcement.

(a) As used in this article, the term "department" means the Department of Public Safety.

(b) The department is authorized to enforce this article by instituting actions for injunction, mandamus, or other appropriate relief. (Code 1981, § 40-1-53, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 3/HB 323.)

The 2013 amendment, effective July 1, 2013, added subsection (a); and designated the existing provisions of this Code section as subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 838,

§ 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

JUDICIAL DECISIONS

Editor's note. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1931, p. 199, § 29, former Code 1933, § 68-632, and former O.C.G.A. § 46-7-31 are included in the annotations for this Code section.

The 1931 law was regulatory in na-

ture, and all persons proposing to conduct the business of a motor carrier as defined thereby must submit themselves to the jurisdiction and control of the commission. *McKinney v. Patton*, 176 Ga. 719, 169 S.E. 16 (1933) (decided under Ga. L. 1931, p. 199, § 29).

Meaning of language “or any individual.” — Words “or any individual” mean any other person having an interest in the subject matter, such as any individual who competed with the common carrier, and would not authorize the grant of an injunction at the instance of individuals whose only interest was as citizens and taxpayers. *Gulledge v. Augusta Coach Co.*, 210 Ga. 377, 80 S.E.2d 274 (1954) (decided under former Code 1933, § 68-632).

“Required certificate” necessary. — Mere fact that a carrier was a certificate

holder would afford the carrier no protection. The question was did the carrier have the required certificate that was one under the terms of which the carrier’s particular operation was authorized. *Bass v. Georgia Public-Service Comm’n*, 192 Ga. 106, 14 S.E.2d 740 (1941) (decided under former Code 1933, § 68-632).

Cited in *McKinney v. Patton*, 176 Ga. 719, 169 S.E. 16 (1933); *Georgia Pub. Serv. Comm’n v. Jones Transp., Inc.*, 213 Ga. 514, 100 S.E.2d 183 (1957).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-53 are offenses for which those

charged are not to be fingerprinted. 2012 Op. Att’y Gen. No. 12-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 33, 125, 146.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 262, 264, 265.

40-1-54. Rules and regulations for implementation and administration.

(a) The department shall promulgate such rules and regulations as are necessary to effectuate and administer the provisions of this article pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(b) The commissioner is authorized to issue such orders, authorizations, and modification thereof as necessary to implement this article.

(c) A court shall take judicial notice of all rules and regulations promulgated by the department pursuant to this Code section. (Code 1981, § 40-1-54, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-54 are offenses for which those

charged are not to be fingerprinted. 2012 Op. Att’y Gen. No. 12-6.

40-1-55. Penalty for violations.

Every officer, agent, or employee of any corporation and every person who violates or fails to comply with this article relating to the regulation of motor carriers and limousine carriers or any order, rule, or

regulation of the Department of Public Safety, or who procures, aids, or abets therein, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of this title. (Code 1981, § 40-1-55, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's note. — In light of the similarity of the statutory provisions, opinions decided under former O.C.G.A. § 46-7-39 are included in the annotations for this Code section.

Fingerprinting not required. — Offense arising from a violation of former O.C.G.A. § 46-7-39 did not, at this time, appear to be an offense for which fingerprinting was required; thus, this offense

was not designated as one for which those charged were to be fingerprinted. 2010 Op. Att'y Gen. No. 2010-2. (decided under former O.C.G.A. § 46-7-39).

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-55 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-56. Financial penalty for violations; suspension of certificate or permit; notice; review.

(a) Any motor carrier or limousine carrier subject to the provisions of Part 2 or Part 3 of this article that fails to register as a motor carrier or limousine carrier with the department or that is subject to the jurisdiction of the department and willfully violates any law administered by the department or any duly promulgated regulation issued thereunder, or that fails, neglects, or refuses to comply with any order after notice thereof, shall be liable for a penalty not to exceed \$15,000.00 for such violation and an additional penalty not to exceed \$10,000.00 for each day during which such violation continues.

(b) Following a reasonable attempt to notify a holder of a certificate, the commissioner is authorized to immediately suspend a motor carrier or limousine carrier certificate or permit if the commissioner finds that such suspension is necessary to protect against an immediate threat to the life, health, or safety of others. An emergency suspension made pursuant to this subsection may be appealed by filing a request for administrative review with the department within 30 days of receipt of notice of the department's decision. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) Notice of a violation and the assessed amount shall be made by means of personal service upon the violator. The notice shall include a warning that a vehicle related to the violation may be subject to suspension of the registration pursuant to Code Section 40-1-56.1. The respondent shall then have 60 days in which to pay the assessed penalty or file with the department a written request for an adminis-

trative review. The request for an administrative review shall specify whether the respondent is challenging the validity of the imposition of the penalty or the amount of the assessment, or both. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d)(1) All penalties and interest thereon, at the rate of 10 percent per annum, recovered by the department shall be paid into the general fund of the state treasury.

(2) Reissuance fees charged by the Department of Revenue shall be retained by the Department of Revenue.

(3) Restoration fees charged by the department shall be retained by the department.

(e)(1) Any party who has exhausted all administrative remedies available before the department and who is aggrieved by a final decision of the department made pursuant to this Code section may seek judicial review of the final order of the department in the Superior Court of Fulton County or in the superior court of the county in which the principal place of business of the aggrieved party is located.

(2) Proceedings for review shall be instituted by filing a petition within 30 days after the service of the final decision of the department or, if a rehearing is requested, within 30 days after the decision thereon. A motion for rehearing or reconsideration after a final decision by the department shall not be a prerequisite to the filing of a petition for review. Copies of the petition shall be served upon the department and all parties of record before the department.

(3) The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision, and the ground upon which the petitioner contends the decision should be reversed. The petition may be amended by leave of court.

(4) Within 30 days after service of the petition or within such further time as is stipulated by the parties or as is allowed by the court, the agency shall have transmitted to the reviewing court the original or a certified copy of the entire record of the proceedings under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate that the record be limited may be taxed for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the department as to the weight of the evidence

on questions of fact. The court may affirm the decision of the department or remand the case for further proceedings. The court may reverse the decision of the department if substantial rights of the petitioner have been prejudiced because the department's findings, inferences, conclusions, or decisions are:

- (A) In violation of constitutional or statutory provisions;
- (B) In excess of the statutory authority of the department;
- (C) Made upon unlawful procedure;
- (D) Clearly not supported by any reliable, probative, and substantial evidence on the record as a whole; or
- (E) Arbitrary or capricious.

(6) A party aggrieved by an order of the court may appeal to the Supreme Court or to the Court of Appeals in accordance with Article 2 of Chapter 6 of Title 5, the "Appellate Practice Act." (Code 1981, § 40-1-56, enacted by Ga. L. 2013, p. 838, § 4/HB 323.)

Effective date. — This Code section became effective July 1, 2013. See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

Ga. L. 2013, p. 838, § 4/HB 323 repealed former Code Section 40-1-56, pertaining to a penalty for a failure to register, administrative procedures, and judicial review, effective July 1, 2013, and enacted the present Code section. The former Code section was based on Ga. L. 2012, p. 580, § 1/HB 865.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-621 are included in the annotations for this Code section.

No provision for unconditional review. — There was no provision in former Code 1933, § 68-621 for unconditional review, but it was to be under the conditions and subject to the limitations as now prescribed by law as related to the commission. *Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n*, 181 Ga. 75, 181 S.E. 834, answer conformed to, 52 Ga. App. 35, 182 S.E. 204 (1935) (decided under former Code 1933, § 68-621).

No right to review order of commission by writ of certiorari. — When a certificate of public convenience and necessity has been granted by the commission to a motor common carrier and,

thereafter such certificate is revoked and canceled by order of the commission, after hearing pursuant to a rule nisi, because of the carrier's failure to operate passenger bus service under said certificate, the motor common carrier has not the right to review such order or judgment of the commission by writ of certiorari from the superior court, as the act of the commission in the revocation of such certificate was not a judicial function, but was the exercise of administrative power, to which action the writ of certiorari does not lie. *Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n*, 52 Ga. App. 35, 182 S.E. 204 (1935) (decided under former Code 1933, § 68-621).

No interference with order of commission unless showing of unreasonableness. — Neither the trial court, nor the Supreme Court on review, will substi-

tute the court's own discretion and judgment for that of the commission when the commission exercised the commission's discretion in a matter over which the commission had jurisdiction, and neither court will interfere with a valid order of

the commission unless it be clearly shown that the order was unreasonable, arbitrary, or capricious. *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-621).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-56 are offenses for which those

charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 140 et seq., 146.

C.J.S. — 13 C.J.S., Carriers, § 373. 60 C.J.S., Motor Vehicles, §§ 125 et seq., 201, 223 et seq.

ALR. — Right to maintain action against carrier on ground that rates which were filed and published by carrier pursuant to law were excessive, 97 ALR 406.

40-1-56.1. Liens on identifiable vehicles; perfection; suspension of registration.

(a) Whenever any motor carrier or limousine carrier owes penalties to the department which were imposed for violations pursuant to Code Section 40-1-56 and the violation relates to an identifiable vehicle, then the motor carrier or limousine carrier shall have 60 days from the date of the assessed penalty or final judicial review following an appeal of the assessment. If the assessment is not paid within the 60 days, such assessment shall become a lien upon the identified motor vehicle found to be in violation, and the lien shall be superior to all liens except liens for taxes or perfected security interests established before the debt to the department was created.

(b) The department shall perfect the lien created under this Code section by sending notice thereof on a notice designated by the department, by first-class mail or by statutory overnight delivery, return receipt requested, to the owner and all holders of liens and security interests shown on the records of the Department of Revenue maintained pursuant to Chapter 3 of this title. Upon receipt of notice from the Department of Public Safety, the holder of the certificate of title shall surrender the same to the state revenue commissioner for issuance of a replacement certificate of title bearing the lien of the department unless the assessment is paid within 60 days of the receipt of notice. The Department of Revenue may append the lien to its records, notwithstanding the failure of the holder of the certificate of title to surrender such certificate as required by this subsection.

(c) Upon issuance of a title bearing the lien of the department, or the appending of the lien to the records of the Department of Revenue, the

owner of the vehicle or the holder of any security interest or lien shown in the records of the Department of Revenue may satisfy such lien by payment of the amount of the assessment, including hearing costs, if any, and payment of an additional reissuance fee of \$100.00 which shall be paid to the Department of Revenue. Upon receipt of such amount, the department shall release its lien and the Department of Revenue shall issue a new title without the lien.

(d)(1) The department, in seeking to foreclose its lien on the motor vehicle arising out of an assessed violation pursuant to Code Section 40-1-56, may seek an immediate writ of possession from the court before whom the petition is filed, if the petition contains a statement of facts, under oath, by the department, its agents, its officers, or attorney setting forth the basis of the petitioner's claim and sufficient grounds for issuance of an immediate writ of possession.

(2) The department shall allege under oath specific facts sufficient to show that it is within the power of the defendant to conceal, encumber, convert, convey, or remove from the jurisdiction of the court the property which is the subject matter of the petition..

(3) The court before whom the petition is pending shall issue a writ for immediate possession upon finding that the petitioner has complied with paragraphs (1) and (2) of this subsection. If the petitioner is found not to have made sufficient showing to obtain an immediate writ of possession, the court may, nevertheless, treat the petition as one being filed under Code Section 44-14-231 and proceed accordingly.

(4) When an immediate writ of possession has been granted, the department shall proceed against the defendant in the same manner as provided for in Code Sections 44-14-265 through 44-14-269.

(e)(1) Whenever any motor carrier or limousine carrier fails within 60 days of the date of issuance of a penalty involving an identifiable vehicle assessed pursuant to Code Section 40-1-56 either to pay the assessment or appeal to the department for an administrative review, the Department of Revenue may act to suspend the motor vehicle registration of the vehicle involved. However, if the motor carrier or limousine carrier requests an administrative review, the Department of Revenue shall act to suspend the registration only after the issuance of a final decision favorable to the department and the requisite failure of the motor carrier or limousine carrier to pay the assessment. Upon such failure to pay the assessment, the Department of Revenue shall send a letter to the owner of such motor vehicle notifying the owner of the suspension of the motor vehicle registration issued to the motor vehicle involved in violation which was the basis for the penalty. Upon complying with this subsection by paying

the overdue assessment, submitting proof of compliance, and paying a \$10.00 restoration fee to the Department of Revenue, the state revenue commissioner shall reinstate any motor vehicle registration suspended under this subsection. In cases where the motor vehicle registration has been suspended under this subsection for a second or subsequent time during any two-year period, the Department of Revenue shall suspend the motor vehicle registration for a period of 60 days and thereafter until the owner submits proof of compliance with this subsection and pays a \$150.00 restoration fee to the Department of Revenue.

(2) Unless otherwise provided for in this Code section, notice of the effective date of the suspension of a motor vehicle registration occurs when the owner has actual knowledge or legal notice thereof, whichever first occurs. For the purposes of making any determination relating to the restoration of a suspended motor vehicle registration, no period of suspension shall be deemed to have begun until ten days after the mailing of the notice required in paragraph (1) of this subsection.

(3) For the purposes of this subsection, except where otherwise provided, the mailing of a notice to a motor carrier or limousine carrier at the name and address shown in records of the Department of Revenue maintained under Chapter 3 of this title shall, with respect to the holders of liens and security interests, be presumptive evidence that such motor carrier or limousine carrier received the required notice.

(4) For the purposes of this subsection, except where otherwise provided, the mailing of a notice to owners and operators of vehicles involved in a penalty assessed pursuant to 40-1-56 shall be presumptive evidence that such motor carrier or limousine carrier received the required notice.

(5) The state revenue commissioner may suspend the motor vehicle registration of any offending vehicle for which payment of an assessment is made by a check that is returned for any reason. (Code 1981, § 40-1-56.1, enacted by Ga. L. 2013, p. 838, § 5/HB 323.)

Effective date. — This Code section became effective July 1, 2013. See editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, a misspelling of "reissuance" was corrected in subsection (c).

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

40-1-57. Rules of Public Service Commission.

Rules, orders, and regulations previously adopted which relate to functions performed by the Public Service Commission which were transferred under this article to the Department of Public Safety shall remain of full force and effect as rules, orders, and regulations of the Department of Public Safety until amended, repealed, or superseded by rules or regulations adopted by the department. (Code 1981, § 40-1-57, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, a misspelling of “Public” was corrected.

The 2013 amendment, effective April

24, 2013, part of an Act to revise, modernize, and correct the Code, revised capitalization in this Code section.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 68-629 and 68-523, and former O.C.G.A. § 46-7-27 are included in the annotations for this Code section.

Rule of the commission is not “law of the state” within the meaning of that term as used in the provisions of the Constitution giving exclusive jurisdiction on appeal to Supreme Court to pass on constitutionality of state law. *Reliable Transf. Co. v. May*, 70 Ga. App. 613, 29 S.E.2d 187 (1944) (decided under former Code 1933, § 68-629).

Commission acts in quasi-legislative manner. — As the commission was authorized to adopt such rules and orders as the commission may deem necessary in the enforcement of the provisions of the statutory law regarding motor common carriers, the commission, therefore, acts in a quasi-legislative manner. *Georgia Pub. Serv. Comm’n v. Smith Transf. Co.*, 207 Ga. 658, 63 S.E.2d 653 (1951) (decided under former Code 1933, § 68-629).

Commission rules have same force and effect as statute. — Rule passed by the commission in pursuance of the statutory law regarding motor common carriers had the force and effect of a law or statute of this state. *Maner v. Dykes*, 52 Ga. App. 715, 184 S.E. 438 (1936), later appeal, 55 Ga. App. 436, 190 S.E. 189

(1937) (decided under former Code 1933, § 68-629).

Commission had authority and power to adopt such rules and regulations within the scope of the legislative enactment, and as an effective means of enforcing the statutory law respecting motor common carriers, and such rules and regulations have the same force and effect as that of a statute. *Georgia Pub. Serv. Comm’n v. Jones Transp., Inc.*, 213 Ga. 514, 100 S.E.2d 183 (1957) (decided under former Code 1933, § 68-629).

Delegation of regulatory power by Legislature proper. — Legislature could clearly designate the Public Service Commission to act for the legislature in seeing that public service motor vehicles conformed to the regulatory laws applicable to those vehicles, leaving to that body the working out of the minor details regarding such regulations. *Maner v. Dykes*, 55 Ga. App. 436, 190 S.E. 189 (1937) (decided under former Code 1933, § 68-629).

Commission not bound by strict rules of evidence in conducting hearings. — Commission was authorized by former Code 1933, § 68-523 to adopt rules of evidence and procedure in carrying out the Commission’s duties in the administration of the law, and was not bound by strict rules of evidence in conducting the commission’s hearings. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm’n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-523).

Effect of introduction of ex parte affidavits at hearing upon commission order. — Upon a hearing by the commission on an application for a certificate of public convenience and necessity, the mere introduction before that body of ex parte affidavits does not invalidate the order of the commission. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-523).

Judicial notice required. — Courts are required to judicially notice rules and

regulations promulgated or adopted by the Commissioner of the Department of Motor Vehicle Safety under former O.C.G.A. §§ 46-7-26 and 46-7-27. *State v. Ponce*, 279 Ga. 651, 619 S.E.2d 682 (2005) (decided under former O.C.G.A. § 46-7-27).

Cited in *Bass v. Georgia Public-Service Comm'n*, 192 Ga. 106, 14 S.E.2d 740 (1941); *Reliance Ins. Co. v. Bridges*, 168 Ga. App. 874, 311 S.E.2d 193 (1983); *Kinard v. National Indem. Co.*, 225 Ga. App. 176, 483 S.E.2d 664 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-57 are offenses for which those

charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 21 et seq., 27 et seq., 130, 140 et seq.

ALR. — State regulation of carriers by

motor vehicle as affected by interstate commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

PART 2

CERTIFICATION OF MOTOR CARRIERS

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, former Code 1933, §§ 68-504, 68-604, and 68-605 and former O.C.G.A. §§ 46-7-3 and 46-7-53, are included in the annotations for this Code section.

Construction with other provisions. — Provisions of former Code 1933, § 68-504 were the same as provisions of former Code 1933, § 68-609 with respect to the enumerated five elements that the commission must consider. Therefore, the decisions of the Supreme Court dealing with former Code 1933, § 68-609 were directly applicable and controlling on the construction of former Code 1933, § 68-504. Both sections add to the five enumerated considerations the following: "among other things." This quoted provision cannot be ignored, and its proper

recognition required a construction that the commission's judgment need not rest upon any or all of the five fields enumerated. *J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n*, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-504).

Public interest more than five elements contained in subsection (f). — Both former Code 1933, § 68-504, which related to "motor contract carriers" and former Code 1933, § 68-609, which related to "motor common carriers" require the procurement of a certificate of public convenience and necessity from the commission after a hearing pursuant to findings by the commission to the effect that "the public interest requires such operation." The public interest, while embracing the five elements yet comprehends much more. *J. & M. Transp. Co. v. Georgia Pub.*

Serv. Comm'n, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-504).

No right to be free from competition. — Former Code 1933, § 68-504 did not afford the right to be free from competition. Wells Fargo Armored Serv. Corp. v. Georgia Pub. Serv. Comm'n, 547 F.2d 938 (5th Cir. 1977) (decided under former Code 1933, § 68-504).

Publisher not liable for unknowingly using unlicensed distributor. — Since there is no duty on the part of a newspaper publisher to inquire and ascertain if a distributor is properly licensed by the Public Service Commission, a publisher cannot be held liable for the negligent driving of its distributor's delivery vehicle on the ground that the driver was not licensed. Tanner v. USA Today, 179 Ga. App. 722, 347 S.E.2d 690 (1986) (decided under former O.C.G.A. § 46-7-53).

Power to select, limit and prohibit uses of highways by carriers for hire, which is implied in the requirement of a certificate of public convenience and necessity, is justified both as a regulation of the business, and as a regulation for the protection and safety of the highways. There is thereby no unequal protection of law, but a reasonable classification. Southern Motorways, Inc. v. Perry, 39 F.2d 145 (N.D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

Doing business on highways is privilege which may be conditioned or withheld. — Motor carriers are engaged in a business that is regulatable, and doing that business on the highways by a privilege which may be conditioned or withheld. Southern Motorways, Inc. v. Perry, 39 F.2d 145 (N.D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

Certificate and annual license fee are legally demandable by state. — Certificate of public convenience and necessity, with a reasonable fee therefor, and an annual license fee for the trucks are legally demandable by a state as a nondiscriminatory prerequisite of the use of the highway for carrier purposes, even though the commerce involved is wholly interstate. Johnson Transf. & Freight Lines v. Perry, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Authority of state to regulate use of roads. — State may license or refuse to license, may condition or charge for, the use of the state's improved roads, when the roads are turned from their common uses and purposes to the carrier's business. Johnson Transf. & Freight Lines v. Perry, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Interstate carrier to pay for use of highway. — Interstate carrier has no better right than any other to use the state's improved highway without the state's consent, or without paying for the use. Johnson Transf. & Freight Lines v. Perry, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Directory or advisory nature of statutory elements of proof of public convenience and necessity. — In determining whether the public interest required the service and whether the certificate should be granted, the commission was directed by statute to consider the five subjects set out in former Code 1933, § 68-609. While these provisions were only directory or advisory, and it was not mandatory that each be proved before the commission was authorized to grant a certificate, reviewing courts recognize that this was a pronouncement by the General Assembly of principles of law generally accepted as elements of proof of public convenience and necessity. Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-604).

Notice of cancellation. — Former O.C.G.A. § 46-7-3 required motor carriers to obtain a certificate of public convenience which may not be issued until a surety bond or evidence of a policy of indemnity insurance is filed with the Public Service Commission (PSC). Under PSC Rule 1-8-1-.07, policies of insurance evidenced by a Form E certificate filed with the PSC remain in effect until cancelled as prescribed by that rule. The filing of a Form E certificate of insurance establishes that a specified policy of insurance has been issued to the motor carrier and that the policy continues in effect until canceled by giving notice to the PSC. Progressive Preferred Ins. Co. v. Ramirez, 277

Ga. 392, 588 S.E.2d 751 (2003) (decided under former O.C.G.A. § 46-7-3).

Insurer's failure to file a notice of cancellation with the Georgia Department of Motor Vehicle Safety (DMVS) did not render the insurer liable under the direct action statute, former O.C.G.A. § 46-7-12, because the former insurer had never obtained a permit of authority under former O.C.G.A. § 46-7-3 to operate as carrier in Georgia, the insurer could not have filed either a certificate of insurance or a notice of cancellation with the DMVS. *Kolencik v. Stratford Ins. Co.*, No.

1:05-cv-0007-GET, 2005 U.S. Dist. LEXIS 34956 (N.D. Ga. Nov. 28, 2005) (decided under former O.C.G.A. § 46-7-3).

Cited in *Phillips v. International Agric. Corp.*, 54 Ga. App. 751, 189 S.E. 54 (1936); *Bass v. Georgia Public-Service Comm'n*, 192 Ga. 106, 14 S.E.2d 740 (1941); *Gallahar v. George A. Rheman Co.*, 50 F. Supp. 655 (S.D. Ga. 1943); *Georgia Pub. Serv. Comm'n v. Smith Transf. Co.*, 207 Ga. 658, 63 S.E.2d 653 (1951); *Coleman v. B-H Transfer Co.*, 284 Ga. 624, 669 S.E.2d 141 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-604, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Exception to requirements of this section. — Temporary emergency authority granted under former Code 1933, § 68-611.1 was an exception to the general requirement of former Code 1933, § 68-604 that no motor common carrier can operate without first obtaining a cer-

tificate. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-604)

Unconstitutional delegation of authority. — If the commission issued a certificate of public convenience and necessity which automatically terminated upon the decision of the municipality to terminate the contract with the certificate holder, the commission would have unlawfully delegated its authority to issue certificates to that municipality. 1980 Op. Att'y Gen. No. 80-162 (decided under former Code 1933, § 68-605).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, § 125 et seq.

Am. Jur. Pleading and Practice Forms. — 3B Am. Jur. Pleading and Prac-

tice Forms, Automobiles and Highway Traffic, § 602.

C.J.S. — 60 C.J.S., Motor Vehicles, § 214 et seq.

40-1-100. Definitions.

As used in this part, the term:

(1) "Carrier" means a person who undertakes the transporting of goods or passengers for compensation.

(2) "Certificate" or "motor carrier certificate" means a certificate of public convenience and necessity issued pursuant to this part or under the "Motor Carrier Act of 1929," under the "Motor Carrier Act of 1931," or under prior law.

(3) "Commissioner" means the commissioner of public safety.

(4) "Company" shall include a corporation, a firm, a partnership, an association, or an individual.

(5) "Corporate sponsored vanpool" means a rideshare program sponsored by an employer in which the employer pays all or some of the costs associated with the transportation of its employees to a single work reporting location and all the vehicles used in the program have a manufacturer's gross vehicle weight rating of not more than 10,000 pounds and are designed to carry not more than 15 passengers including the driver.

(6) "Department" means the Department of Public Safety.

(7) "Exempt rideshare" means:

(A) Government endorsed rideshare programs;

(B) Rideshare programs in which a rideshare driver seeks reimbursement for, or the rideshare participants pool or otherwise share, rideshare costs such as fuel; or

(C) The leasing or rental of a vehicle, in the ordinary course of the lessor's or rentor's business, for rideshare purposes as part of a government endorsed rideshare program, or for rideshare under a contract requiring compliance with subparagraph (B) of this paragraph.

(8) "For compensation" or "for hire" means an activity relating to a person engaged in the transportation of goods or passengers for compensation.

(9) "Government endorsed rideshare program" means a vanpool, carpool, or similar rideshare operation conducted by or under the auspices of a state or local governmental transit instrumentality, such as GRTA, a transportation management association, or a community improvement district, or conducted under the auspices of such transit agencies, including through any form of contract between such transit instrumentality and private persons or businesses.

(10) "GRTA" means the Georgia Regional Transportation Authority, which is itself exempt from regulation as a carrier under Code Section 50-32-71.

(11) "Household goods" means any personal effects and property used or to be used in a dwelling when a part of the equipment or supplies of such dwelling and such other similar property as the commissioner may provide for by regulation; provided, however, that such term shall not include property being moved from a factory or store except when such property has been purchased by a householder with the intent to use such property in a dwelling and such property is transported at the request of, and with transportation charges paid by, the householder.

(12) "Motor carrier" means:

(A) Every person owning, controlling, operating, or managing any motor vehicle, including the lessees, receivers, or trustees of such persons or receivers appointed by any court, used in the business of transporting for hire persons, household goods, or property or engaged in the activity of nonconsensual towing pursuant to Code Section 44-1-13 for hire over any public highway in this state.

(B) Except as otherwise provided in this subparagraph, the term "motor carrier" shall not include:

(i) Motor vehicles engaged solely in transporting school children and teachers to and from public schools and private schools;

(ii) Taxicabs which operate within the corporate limits of municipalities and are subject to regulation by the governing authorities of such municipalities; the provisions of this division notwithstanding, vehicles and the drivers thereof operating within the corporate limits of any city shall be subject to the safety regulations adopted by the commissioner of public safety pursuant to Code Section 40-1-8;

(iii) Limousine carriers as provided for in Part 3 of this article;

(iv) Hotel passenger or baggage motor vehicles when used exclusively for patrons and employees of such hotel;

(v) Motor vehicles operated not for profit with a capacity of 15 persons or less when they are used exclusively to transport elderly and disabled passengers or employees under a corporate sponsored vanpool program, except that a vehicle owned by the driver may be operated for profit when such driver is traveling to and from his or her place of work, provided each such vehicle carrying more than nine passengers maintains liability insurance in an amount of not less than \$100,000.00 per person and \$300,000.00 per accident and \$50,000.00 property damage. For the purposes of this part, elderly and disabled passengers are defined as individuals over the age of 60 years or who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable to utilize mass transportation facilities as effectively as persons who are not so affected;

(vi) Motor vehicles owned and operated exclusively by the United States government or by this state or any subdivision thereof;

(vii) Vehicles, owned or operated by the federal or state government or by any agency, instrumentality, or political sub-

division of the federal or state government, or privately owned and operated for profit or not for profit, capable of transporting not more than ten persons for hire when such vehicles are used exclusively to transport persons who are elderly, disabled, en route to receive medical care or prescription medication, or returning after receiving medical care or prescription medication. For the purpose of this part, elderly and disabled persons shall have the same meaning as in division (v) of this subparagraph; or

(viii) Ambulances.

(13) “Passenger” means a person who travels in a public conveyance by virtue of a contract, either express or implied, with the carrier as to the payment of the fare or that which is accepted as an equivalent therefor. The prepayment of fare is not necessary to establish the relationship of passenger and carrier, although a carrier may demand prepayment of fare if persons enter his or her vehicle by his or her permission with the intention of being carried; in the absence of such a demand, an obligation to pay fare is implied on the part of the passenger, and the reciprocal obligation of carriage of the carrier arises upon the entry of the passenger.

(14) “Permit” means a written or electronic authorization issued by the department to motor carriers of passengers and nonconsensual towing companies for the purpose of providing services in accordance with the rules and guidelines of the department.

(15) “Person” means any individual, partnership, trust, private or public corporation, municipality, county, political subdivision, public authority, cooperative, association, or public or private organization of any character.

(16) “Public highway” means every public street, road, highway, or thoroughfare of any kind in this state.

(17) “Vehicle” or “motor vehicle” means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined by the commissioner. (Code 1981, § 40-1-100, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 6/HB 323.)

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “the commissioner of public safety” for “the Commissioner of the Department of Public Safety”

in paragraph (3). The second 2013 amendment, effective July 1, 2013, substituted “commissioner of public safety” for “Commissioner of the Department of Public Safety” in paragraph (3); added paragraphs (5) and (6); redesignated former

paragraphs (5) through (11) as present paragraphs (7) through (13), respectively; rewrote paragraph (8); in paragraph (12), substituted “goods, or property or” for “goods, property, or” in subparagraph (12)(A), in the first sentence of division (12)(B)(v), substituted “vanpool” for “van pool” and inserted a comma after “place of work”, and deleted a comma following “state government” near the beginning of division (12)(B)(vii); in paragraph (13), substituted a comma for a semicolon following “and carrier” near the middle of the second sentence; added paragraph (14); and redesignated former paragraphs (12) through (14) as present paragraphs (15) through (17), respectively. See editor’s note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, “Code Section 40-1-8” was substituted for “Code Section 60-1-8” at the end of division (10)(B)(ii) (now division (12)(B)(ii)) and “division (v) of this subparagraph” was substituted for “division (iv) of this subparagraph” near the end of division (10)(B)(vii) (now division (12)(B)(vii)).

Editor’s notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

40-1-101. Regulatory compliance inspections; regulation of business; requirements of motor carriers.

(a) Notwithstanding any other provision of law to the contrary, all motor carriers operating on the public roads of this state shall be subject to the requirements of this part and shall be deemed to have given consent to regulatory compliance inspections.

(b) Unless expressly prohibited by federal law, the commissioner is vested with power to regulate the business of any person engaged in the transportation as a motor carrier of persons or property, either or both, for hire on any public highway of this state.

(c) The commissioner is authorized to employ and designate a person or persons as necessary to implement and carry out the functions contained in this part.

(d) All motor carriers shall:

- (1) Obtain a certificate as required by this part;
- (2) Maintain liability insurance as provided in the rules and regulations of the department;
- (3) Act in compliance with Georgia’s workers’ compensation laws as provided in Chapter 9 of Title 34; and
- (4) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law. (Code 1981, § 40-1-101, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “Title 34; and” for “Title 34 of the Official Code of Georgia Annotated; and” in paragraph (d)(3).

Editor’s notes. — Ga. L. 2013, p. 141, § 40(4)/HB 79, which amended this Code section, purported to amend paragraph (3) of this Code section, but actually amended paragraph (d)(3) of this Code section.

40-1-102. Certificate or permit prerequisite to operation; minimum insurance requirement.

(a) No motor carrier of passengers or household goods shall, except as otherwise provided in this part, operate without first obtaining from the commissioner a certificate or permit.

(b) Before a motor carrier may enter into any contract for the transportation of passengers, the motor carrier shall provide to all parties to the agreement a copy of the motor carrier’s proof of legally required minimum insurance coverage and a valid certification number demonstrating that the motor carrier is currently certified by the commissioner, the Federal Motor Carrier Safety Administration, or any other similarly required certifying agency. Any contract entered into in violation of this Code section shall be void and unenforceable. (Code 1981, § 40-1-102, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 756, § 1/HB 255; Ga. L. 2013, p. 838, § 7/HB 323.)

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “state revenue commissioner” for “Commissioner of Revenue” in the first sentence of subsection (b). See editor’s note. The second 2013 amendment, effective July 1, 2014, deleted “the Commissioner of Revenue,” preceding “the Federal Motor Carrier” near the end of the first sentence of subsection (b). The third 2013 amendment, effective July 1, 2013, in subsection (a), deleted “or property” following “household goods” near the beginning and added “or permit” at the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 141, § 54(f)/HB 79, not codified by the General Assembly, provides that: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2013 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.”

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

40-1-103. Application form for certificate; issuance to qualified applicant.

(a) The department shall prescribe the form of the application for a motor carrier certificate and shall prescribe such reasonable requirements as to notice, publication, proof of service, maintenance of adequate liability insurance coverage, and information as may, in its

judgment, be necessary and may establish fees as part of such certificate process.

(b) A motor carrier certificate shall be issued to any qualified applicant, provided that such applicant is a motor carrier business domiciled in this state, authorizing the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and conform to the provisions of this part and the rules and regulations of the department and has not been convicted of any felony as such violation or violations are related to the operation of a motor vehicle. (Code 1981, § 40-1-103, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-104. Revocation, alteration, or amendment of certificate or permit; suspension; out-of-service orders.

(a) The commissioner may, at any time after notice and opportunity to be heard and for reasonable cause, revoke, alter, or amend any motor carrier certificate or permit, if it shall be made to appear that the holder of the certificate has willfully violated or refused to observe any of the lawful and reasonable orders, rules, or regulations prescribed by the commissioner or any of the provisions of this part or any other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of the commissioner the holder of the certificate is not furnishing adequate service.

(b) The commissioner may, at any time, after reasonable attempt at notice, immediately suspend any motor carrier certificate or permit, if the commissioner finds such suspension necessary:

- (1) To protect life, health, or safety;
- (2) For the protection of consumers; or

(3) Based upon a finding that the carrier no longer meets the qualification or fitness requirements of Code Section 40-1-103 or 40-1-106.

Certificate holders affected by such suspension may appeal to the commissioner for review pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The commissioner may exercise his or her discretion to designate a hearing officer for such appeals.

(c) The commissioner, or his or her designated employees, may issue an out-of-service order or orders to a certificate or permit holder, pursuant to the provisions of this article or the department's rules. (Code 1981, § 40-1-104, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 8/HB 323.)

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subsection (b). The second 2013 amendment, effective July 1, 2013, inserted “or permit” throughout this Code section; substituted the present provisions of subsection (b) for the former provisions, which read: “The commissioner may, at any time, after reasonable attempt at notice, immediately suspend any motor carrier certificate, if the commissioner finds such suspension necessary to protect life, health, or safety, or to protect the public and consumers. Certificate holders affected by such sus-

pension may appeal to the commissioner for review pursuant to Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act.’ The commissioner may exercise his or her discretion to designate a hearing officer for such appeals.”; and added “or the department’s rules” at the end of subsection (c). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-607 are included in the annotations for this Code section.

No right to review revocation order of commission by writ of certiorari. — When a certificate of public convenience and necessity has been granted by the commission to a motor common carrier to operate a passenger, baggage, and express service by motor vehicles over a specified route between certain named cities in this state, and, thereafter such certificate is revoked and canceled by order of the commission, after hearing pursuant to a rule nisi, because of the carrier’s failure to operate passenger bus service under said certificate, the motor common carrier has not the right to review such order or judgment of the commission by writ of certiorari from the superior court, as the act of the commission in the revocation of such certificate was not a judicial function, but was the exercise of administrative power, to which action the writ of certiorari does not lie. *Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm’n*, 181 Ga. 75, 181 S.E. 834, answer conformed to, 52 Ga. App. 35, 182 S.E. 204 (1935) (decided under former Code 1933, § 68-607).

Authority of commission to trans-

fer truck operations. — When a Class “B” certificate authorizing a holder to transport household, kitchen, office furniture, and store fixtures between all points in Georgia, which, under former Code 1933, § 68-607, the commission was authorized to “suspend, revoke, alter, or amend,” and under former Code 1933, § 68-608, was authorized to transfer, was altered or amended and transferred, being limited to between all points within a 20 mile radius of Atlanta, there was no merit in the contention that the commission was without authority to transplant a one-truck operation from the outskirts of Calhoun to an eleven-truck operation in the metropolis of Atlanta. *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm’n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-607).

Control of pedestrians and motor vehicles within police power of municipality. — Control of pedestrians and motor vehicles on municipal streets, including those on and around school grounds was a governmental function within the police power of the municipality. *Fletcher v. Russell*, 151 Ga. App. 229, 259 S.E.2d 212 (1979), rev’d on other grounds, 244 Ga. 854, 262 S.E.2d 138 (1979) (decided under former Code 1933, § 68-607).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-607, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Former Code 1933, § 68-607 was plain and unambiguous, and hence not subject to legal interpretation; it clearly authorized the commission to revoke or amend a certificate if the carrier was not furnishing adequate service. The only question to be determined in such a case was whether or not the service was inadequate from any cause; it made no difference whether that inadequacy may have resulted from abandonment of other services by the applicant or any other carrier, or whether it arises from gradual population shifts. 1957 Op. Att'y Gen. p. 222 (decided under former Code 1933, § 68-607).

Public convenience and necessity determinative factor concerning continuation of service. — In determining whether a branch line should be discontinued, public convenience and necessity — not loss to the utility — when the operation as a whole is profitable, is the determinative factor, and the commission may consider the return from the entire system rather than just the branch line. Of course, under the guise of regulation

the property of a carrier may not be taken by requiring it to furnish services or facilities not reasonably necessary to serve the public. 1957 Op. Att'y Gen. p. 222 (decided under former Code 1933, § 68-607).

Effect of revocation of certificate by commission. — When the commission, under former Code 1933, § 68-607, after notice and opportunity to be heard, and for reasonable cause, revoked and canceled a certificate of public convenience and necessity, such certificate became forever dead and the original holder thereof had no further privileges thereunder, and before the holder of such canceled and revoked certificate can again enjoy the privileges the holder formerly enjoyed under the certificate, the holder must first file a new application and it then became the duty of the commission to assign the application for a hearing so that the commission may determine that the public interest required such operations. 1945-47 Op. Att'y Gen. p. 403 (decided under former Code 1933, § 68-607).

Duty of utility to furnish adequate service correlative of right to serve. — Former Code 1933, § 68-607 was simply one expression of the principle which permeated all public utility regulations — the duty of the utility to furnish adequate service, which was a correlative of its right to serve. 1957 Op. Att'y Gen. p. 222 (decided under former Code 1933, § 68-607).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 140 et seq., 155.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 258 et seq., 300, 301.

40-1-105. Transfer of certificate.

Any motor carrier certificate issued pursuant to this part may be transferred upon application to and approval by the commissioner, and not otherwise. (Code 1981, § 40-1-105, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-608 are included in the annotations for this Code section.

Authority of commission to transfer truck operations. — When a Class "B" certificate authorizing a holder to transport household, kitchen, office furniture, and store fixtures between all points in Georgia, which, under former Code 1933, § 68-607, the commission was authorized to "suspend, revoke, alter, or amend," and under former Code 1933,

§ 68-608, was authorized to transfer was altered or amended and transferred, being limited to between all points within a 20 mile radius of Atlanta there was no merit in the contention that the commission was without authority to transplant a one-truck operation from the outskirts of Calhoun to an eleven-truck operation in the metropolis of Atlanta. *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-608).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, § 135 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 201 et seq.

ALR. — Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance, 15 ALR2d 883.

40-1-106. Fitness of applicant; protesting certificate.

(a) The commissioner shall issue a motor carrier certificate to a person authorizing transportation as a motor carrier of passengers or household goods subject to the jurisdiction of the department if the commissioner finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with regulations of the department. Fitness encompasses three factors:

(1) The applicant's financial ability to perform the service it seeks to provide;

(2) The applicant's capability and willingness to perform properly and safely the proposed service; and

(3) The applicant's willingness to comply with the laws of Georgia and the rules and regulations of the department.

(b) The initial burden of making out a prima-facie case that an applicant is fit to provide such service rests with the applicant.

(c) Upon an applicant making out a prima-facie case as to the motor carrier's ability to provide the service, the burden shifts to protestant to show that the authority sought should not be granted.

(d) A protest of a motor carrier of passengers or of household goods to an application shall not be considered unless the protesting motor carrier:

(1) Possesses authority from the department to handle, in whole or in part, the authority which is being applied for and is willing and able to provide service and has performed service during the previous 12 month period or has actively in good faith solicited service during such period;

(2) Has pending before the department an application previously filed with the department for substantially the same authority; or

(3) Is granted by the commissioner leave to intervene upon a showing of other interests which in the discretion of the commissioner would warrant such a grant.

(e) The commissioner may issue a certificate without a hearing if the application is unopposed or unopposed. (Code 1981, § 40-1-106, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 9/HB 323.)

The 2013 amendment, effective July 1, 2013, deleted “or property” following “household goods” in the first sentence of subsection (a) and in the introductory paragraph of subsection (d); and substituted “application shall not” for “application will not” in subsection (d). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-609 and former O.C.G.A. § 46-7-7 are included in the annotations for this Code section.

Principles generally accepted as elements of proof of public convenience and necessity. — In determining whether the public interest requires the service and whether the certificate should be granted, the commission was directed by statute to consider the five subjects set out in former Code 1933, § 68-609. While these provisions were only directory or advisory, and it was not mandatory that each be proved before the commission was authorized to grant a certificate, this court recognized that this was a pronouncement by the General Assembly of principles of law generally accepted as elements of proof of public convenience and necessity. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm’n*, 213 Ga. 418, 99 S.E.2d 225

(1957) (decided under former Code 1933, § 68-609).

Provisions of this Code section are advisory. — Each of the five specific subjects set forth in former Code 1933, § 68-609, which the law said the commission must consider, was intended for the guidance of the commission and to define the fields in which the commission should give consideration, but was merely advisory, irrespective of what the evidence might disclose in respect to each of the five subjects. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609).

Provisions not applicable to grant or denial of Class “B” certificates. — Provisions of former Code 1933, § 68-609 declaring that the commission must consider whether existing transportation service of all kinds was adequate to meet the reasonable public needs, the volume of existing traffic over such route, and whether such traffic and that reasonably

to be anticipated in the future can support already existing transportation agencies and also the applicant, the effect on existing transportation revenues and service of all kinds, and particularly whether the granting of such certificate would or may seriously impair essential existing public service, was advisory only and, irrespective of what the evidence might be upon the subjects there mentioned, the commission may grant or deny a Class "B" certificate without offending the law. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609); *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-609).

The 1950 amendment to former Code 1933, § 68-609 was expressly limited to certificates over fixed routes, and had no application to Class "B" certificates. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609); *Woodside Transf. & Storage Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. 625, 94 S.E.2d 706 (1956) (decided under former Code 1933, § 68-609).

Use of term "public." — The use of the term "public" in former O.C.G.A. § 46-7-7 was intended to distinguish private carriage operations which require no certificate of public convenience and necessity. *Georgia Messenger Serv., Inc. v. Georgia Pub. Serv. Comm'n*, 194 Ga. App. 340, 390 S.E.2d 283, cert. vacated, 260 Ga. 470, 397 S.E.2d 709 (1990) (decided under former O.C.G.A. § 46-7-7).

Primary concern is public interest and welfare and grant of certificate is discretionary. — In the hearing on an application for a certificate, the commission merely conducts an investigation of fact, authorized by statute, in the determination of which the primary concern is the public interest and welfare. Whether or not the commission grants an application for a certificate is purely a matter of discretion and not one of absolute right. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

Five factors enumerated to be considered by commission. — Former O.C.G.A. § 46-7-7 enumerated five factors, among others, that the Public Service Commission must consider in determining whether a certificate of public convenience and necessity should be granted. *RTC Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 165 Ga. App. 539, 301 S.E.2d 896 (1983) (decided under former O.C.G.A. § 46-7-7).

Public interest comprehends much more than five elements contained in this section. — Both former Code 1933, § 68-504, which related to "motor contract carriers" and former Code 1933, § 68-609, which related to "motor common carriers" require the procurement of a certificate of public convenience and necessity from the commission after a hearing pursuant to findings by the commission to the effect that "the public interest requires such operation." The public interest, while embracing the five elements, comprehends much more. *J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n*, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-609).

No error to refuse injunction where evidence supports discretion of commission. — When it appears that the commission had evidence authorizing the commission in the exercise of the commission's discretion to issue the certificate applied for, the trial judge did not err in refusing to enjoin the commission or the applicant. *J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n*, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-609).

Commission free to exercise its judgment to grant or deny applications. — Commission, as respects Class "B" certificates, is free to exercise the commission's own judgment and to grant or deny the applications for such certificates. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609).

Error for trial judge to enjoin certificate holder from operating. — It was error for the trial judge to enjoin the holder of a Class "B" certificate from operating thereunder upon the theory that the evidence failed to show inadequacy of ex-

isting transportation service. *Petroleum Carrier Corp. v. Davis*, 210 Ga. 568, 81 S.E.2d 805 (1954) (decided under former Code 1933, § 68-609).

No interference with order of commission unless showing of unreasonableness. — Neither the trial court, nor a court on review, will substitute the court's own discretion and judgment for that of the commission when the commission exercised the commission's discretion in a matter over which the commission had jurisdiction, and will not interfere with a valid order of the commission unless it be clearly shown that the order is unreasonable, arbitrary, or capricious. *Brown Transp. Corp. v. Pilcher*, 222 Ga. 276, 149 S.E.2d 670 (1966) (decided under former Code 1933, § 68-609).

Commission's order supported by some evidence will not be overturned on appeal. — When the record reflects that the Public Service Commission's order denying the requested certificates was supported by some evidence and was not unreasonable, arbitrary, or capricious, the Court of Appeals will not substitute the court's own decision for that of the commission. *RTC Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 165 Ga. App. 539, 301 S.E.2d 896 (1983) (decided under former O.C.G.A. § 46-7-7).

Applicability of decisions of Supreme Court construing comparable provisions. — Provisions of former Code 1933, § 68-504 were in all respects the same as the provisions of former Code 1933, § 68-609 with respect to the enumerated five elements that the commission must consider. Therefore, the decisions of the Supreme Court dealing with former Code 1933, § 68-609, were directly applicable and controlling on the construction of former Code 1933, § 68-504. Both sections add to the five enumerated considerations the following: "among other things." This quoted provision cannot be ignored, and its proper recognition required a construction that the commission's judgment need not rest upon any or all of the five fields enumerated. *J. & M. Transp. Co. v. Georgia Pub. Serv. Comm'n*, 217 Ga. 296, 122 S.E.2d 227 (1961) (decided under former Code 1933, § 68-609).

So long as certificate remained unrevoked, commission could autho-

size certificate's transfer. — Question of public convenience and necessity having been determined by the commission at the time the certificate was issued, the commission would not be required on an application for transfer to consider that question again before granting a transfer of the certificate. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

When existing certificate holder not entitled to notice and opportunity required by this section. — When the proposed route was not the same as that used by a certificate holder, that company was not entitled to notice and an opportunity to remedy inadequate service as required by former Code 1933, § 68-609. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

Existing certificate holder must have opportunity to improve service. — Competing motor carrier certificate cannot be granted until after the existing certificate holder has had an opportunity to improve service. *Statesboro Tel. Co. v. Georgia Pub. Serv. Comm'n*, 235 Ga. 179, 219 S.E.2d 127 (1975) (decided under former Code 1933, § 68-609).

"Route" defined. — Word "route," as used in former Code 1933, § 68-609, meant the particular highway or road, or series of highways or roads, over which a carrier is authorized by the commission to operate the carrier's vehicles between terminal points. *Tamiami Trail Tours, Inc. v. Georgia Pub. Serv. Comm'n*, 213 Ga. 418, 99 S.E.2d 225 (1957) (decided under former Code 1933, § 68-609).

"Route" and "highway" distinguished. — A "route" is a direction of travel from one place to another. It may be over one or more named or numbered highways or paths. A "highway" is a road for travel, and may be a portion of one or more different routes. When numbered or named as a highway running from one point to another, it becomes a route. *Brown Transp. Corp. v. Pilcher*, 222 Ga. 276, 149 S.E.2d 670 (1966) (decided under former Code 1933, § 68-609).

When two routes can be same route. — Two routes cannot be the same unless

the highways, the certificates of convenience and necessity, and the terminal points are the same. *Brown Transp. Corp. v. Pilcher*, 222 Ga. 276, 149 S.E.2d 670 (1966) (decided under former Code 1933, § 68-609).

Certificate amendment based on need expressed by single shipper. — Certificate amendment, which was sought on the basis of a need expressed by a single shipper, was properly granted since the evidence established that the pro-

posed service would serve a useful public purpose and be responsive to a public demand or need. *Georgia Messenger Serv., Inc. v. Georgia Pub. Serv. Comm'n*, 194 Ga. App. 340, 390 S.E.2d 283, cert. vacated, 260 Ga. 470, 397 S.E.2d 709 (1990) (decided under former O.C.G.A. § 46-7-7).

Cited in *Georgia Pub. Serv. Comm'n v. Smith Transf. Co.*, 207 Ga. 658, 63 S.E.2d 653 (1951).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, § 130 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 201, 214 et seq., 223 et seq.

ALR. — State regulation of carriers by motor vehicle as affected by interstate

commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

When granting or refusing certificate of necessity or convenience for operation of motorbuses justified, 67 ALR 957.

40-1-107. Information in application.

The commissioner shall adopt rules prescribing the manner and form in which motor carriers of passengers or household goods or property shall apply for certificates required by this part. Such rules shall require that the application be in writing, under oath, and that the application:

(1) Contains full information concerning the applicant's financial condition, the equipment proposed to be used, including the size, weight, and capacity of each vehicle to be used, and other physical property of the applicant;

(2) States the complete route or routes over which the applicant desires to operate and the proposed time schedule of the operation; and

(3) Contains any such other or additional information as the commissioner may order or require. (Code 1981, § 40-1-107, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-108. Transportation of persons under age 21 drinking alcohol.

Any motor carrier subject to the jurisdiction of the commissioner that transports passengers shall comply with the provisions of Code Section 3-3-23, concerning consumption of alcoholic beverages by persons under the age of 21. The commissioner shall provide to all motor carriers, at the time of registration or renewal of a certificate, an informational

packet emphasizing the prohibition on alcohol consumption by persons under the age of 21 while being transported by the motor carrier. (Code 1981, § 40-1-108, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-109. Fees upon initial application.

The commissioner shall collect the following one-time fees upon initial application of a motor carrier pursuant to this part:

(1) A fee of \$75.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates fewer than six motor vehicles;

(2) A fee of \$150.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates six to 15 motor vehicles;

(3) A fee of \$200.00 to accompany each application for a motor carrier certificate, or amendment to an existing certificate, where the applicant owns or operates more than 15 motor vehicles;

(4) A fee of \$75.00 to accompany each application for transfer of a motor carrier certificate; and

(5) A fee of \$50.00 to accompany each application for intrastate temporary emergency authority under Code Section 40-1-114. (Code 1981, § 40-1-109, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, “Code Section 40-1-114” was substituted for “Code Section 40-1-104” at the end of paragraph (5).

40-1-110. Hearing and notice of pending application.

The commissioner, upon the filing of an application for a motor carrier certificate, shall give notice of the pending application by posting the same on the department’s official website for ten days. If a protest is filed with the department, the commissioner shall fix a time and place for a hearing. If no protest is filed with the department or if the protest is subsequently withdrawn, the commissioner may issue the motor carrier certificate without a hearing. (Code 1981, § 40-1-110, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 10/HB 323.)

The 2013 amendment, effective July 1, 2013, substituted “give notice of the pending application by posting the same on the department’s official website for ten days” for “fix a time and place for hearing thereon and shall, at least ten days before the hearing, give notice thereof by advertising the same at the expense of the applicant in a newspaper in Atlanta, in which sheriffs’ notices are published” in

the first sentence, and added the second sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General

Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

40-1-111. Limitation upon reapplication for denied applicants.

When an application for a motor carrier certificate under this part has been in whole or in part denied by the commissioner, or has been granted by the commissioner, and the order of the commissioner granting same has been quashed or set aside by a court of competent jurisdiction, a new application by the same petitioner or applicant therefor shall not be again considered by the department within three months from the date of the order denying the same or the judgment of the court quashing or setting aside the order. (Code 1981, § 40-1-111, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-112. Insurance of motor carriers.

(a) No motor carrier of household goods or property or passengers shall be issued a motor carrier certificate unless there is filed with the department a certificate of insurance for such applicant or holder on forms prescribed by the commissioner evidencing a policy of indemnity insurance by an insurance company licensed to do business in this state, which policy must provide for the protection, in case of passenger vehicles, of passengers and the public against injury proximately caused by the negligence of such motor carrier, its servants, or its agents; and, in the case of vehicles transporting household goods, to secure the owner or person entitled to recover against loss or damage to such household goods for which the motor common carrier may be legally liable. The department shall determine and fix the amounts of such indemnity insurance and shall prescribe the provisions and limitations thereof. The insurer shall file such certificate. The failure to file any form required by the department shall not diminish the rights of any person to pursue an action directly against a motor carrier's insurer.

(b) The department shall have power to permit self-insurance, in lieu of a policy of indemnity insurance, whenever in its opinion the financial ability of the motor carrier so warrants.

(c) It shall be permissible under this part for any person having a cause of action arising under this part to join in the same action the motor carrier and the insurance carrier, whether arising in tort or contract. (Code 1981, § 40-1-112, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

ANALYSIS

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Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, former Code 1933, § 68-612, and former O.C.G.A. §§ 46-7-12 and 46-7-58 are included in the annotations for this Code section.

Purpose of Code section. — Former Code 1933, § 68-612 did not have as the statute's purpose protecting the insured from loss, but in the protection of the public against carrier-inflicted injuries. *Farley v. Continental Ins. Co.*, 150 Ga. App. 389, 258 S.E.2d 8 (1979) (decided under former Code 1933, § 68-612).

Constitutionality. — Last sentence in subsection (e) (now subsection (c)) of former Code 1933, § 68-612 considered with the statute's context, was not a special law, but a general law applicable alike to all motor carriers and indemnity-insurance companies filing bonds and insurance policies under provisions of the act in all parts of the state, and being of such character was not violative of Ga. Const. 1976, Art. I, Sec. II, Para. VII, (Ga. Const. 1983, Art. I, Sec. II, Para. X) inhibiting passage of special laws for which provision has been made by an existing general law. *Lloyds Am. v. Brown*, 187 Ga. 240, 200 S.E. 292 (1938) (decided under former Code 1933, § 68-612).

Former Code 1933, § 68-612 was not void as violative of Ga. Const. 1976, Art. I, Sec. II, Para. III (Ga. Const. 1983, Art. I, Sec. II, Para. IV) or U.S. Const., art. XIV, sec. 1. *Lloyds Am. v. Brown*, 187 Ga. 240, 200 S.E. 292 (1938) (decided under former Code 1933, § 68-612).

Joinder of the motor carrier and the carrier's insurer or surety in the same action does not violate the equal protec-

tion or due process clauses of the Georgia Constitution. *Grissom v. Gleason*, 262 Ga. 374, 418 S.E.2d 27 (1992) (decided under former O.C.G.A. § 46-7-12).

Joinder provision did not violate the equal protection clause of the Constitution of the State of Georgia of 1983. *Edwards v. Kessler*, 262 Ga. 346, 419 S.E.2d 21 (1992) (decided under former O.C.G.A. § 46-7-58).

Any issue as to the constitutionality of former O.C.G.A. § 46-7-12 was in the exclusive jurisdiction of the Supreme Court on appeal and, in any case, could not be properly raised on appeal when the trial court did not expressly consider and rule upon the issue. *Wright v. Transus, Inc.*, 209 Ga. App. 771, 434 S.E.2d 786 (1993) (decided under former O.C.G.A. § 46-7-12).

Section must be strictly construed. — Former O.C.G.A. § 46-7-12 was in derogation of the common law and must be strictly construed. *National Indem. Co. v. Tatum*, 193 Ga. App. 698, 388 S.E.2d 896 (1989) (decided under former O.C.G.A. § 46-7-12).

Duty to indemnify motoring public for carrier's negligence. — When an insurer purports to issue coverage to an insured which the insurer knows is a motor carrier, the insurer assumes responsibility to indemnify the motoring public for injuries sustained by virtue of the carrier's negligence in at least the minimum amount statutorily required under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-1 et seq., and up to the policy limits, notwithstanding any provisions in the insurance policy to the contrary; any negative consequences arising from noncompliance with the Act by the insured motor carrier or the in-

surer should be suffered by one or both of the noncompliant parties rather than by the innocent motoring public. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former O.C.G.A. § 46-7-12).

Insurer's liability for unsatisfied judgment against insured. — An insurer is absolutely liable for any unsatisfied judgment which may be obtained against its insured whether or not its insured breached the conditions of the policy. *Seawheels, Inc. v. Bankers & Shippers Ins. Co.*, 175 Ga. App. 528, 333 S.E.2d 650 (1985) (decided under former O.C.G.A. § 46-7-12).

Carrier's liability for operation by lessee of truck with trailer removed. — Public policy independently intended motor carrier to bear full responsibility to public for the operation by its lessee of a "bobtailed" truck (tractor with trailer removed) which the lessee was driving on the lessee's way home. *Nationwide Mut. Ins. Co. v. Holbrooks*, 187 Ga. App. 706, 371 S.E.2d 252 (1988) (decided under former O.C.G.A. § 46-7-12).

Preemption by federal law. — Former O.C.G.A. § 46-7-12 was not preempted by 49 U.S.C. § 10927 which provided for payment of a claim by an insurer after a final judgment had been recovered against the motor carrier the insurer insures. *Watkins v. H.O. Croley Granary*, 555 F. Supp. 458 (N.D. Ga. 1982) (decided under former O.C.G.A. § 46-7-12).

No direct action against insurer of exempt vehicle. — When an insured commercial motor vehicle was acting as a timber hauler at the time of an accident, it was not within the definition of a common carrier or contract carrier, and no direct action could be maintained against an insurer because the insurer was outside the ambit of former O.C.G.A. § 46-7-12. *Smith v. Southern Gen. Ins. Co.*, 222 Ga. App. 582, 474 S.E.2d 745 (1996) (decided under former O.C.G.A. § 46-7-12).

Since former O.C.G.A. § 46-1-1 (9)(C)(xiv), as it existed prior to the 2002 amendment, exempted dump trucks from the definition of motor contract or common carrier, the insurer for a dump truck that was involved in a motor vehicle collision could not be subjected to a direct

action. The insurer was properly dismissed from a counterclaim against the driver in the driver's personal injury action against the other driver. *Morgan Driveaway, Inc. v. Canal Ins. Co.*, 266 Ga. App. 765, 598 S.E.2d 38 (2004) (decided under former O.C.G.A. § 46-7-12).

"Actionable injury" defined. — "Actionable injury" means an injury to a person who could sue the carrier and obtain a judgment for the injuries sustained. Such definition by its nature broadly includes all third-parties injured by the negligence of the motor carrier, or by the negligence of its servants, and necessarily excludes employees of the carrier who could not sue the employer. Likewise, if the motor carrier could not be liable for a failure of agency of a particular employee in the accident in question, the insurance company may be protected thereby. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Under the laws of this state, a master is not liable for damages for the negligence of a fellow servant generally, and if a case is such that a master is so liable at common law generally, the master would not be subject to action and judgment if the carrier and employee came under the provisions of the workers' compensation law (see O.C.G.A. Ch. 9, T. 34). *Combs v. Carolina Cas. Ins. Co.*, 90 Ga. App. 90, 82 S.E.2d 32 (1954) (decided under former Code 1933, § 68-612).

No "actionable injury" against motor carrier for which insurer could be held liable. — See *Mathews v. Rail Express, Inc.*, 836 F. Supp. 873 (N.D. Ga. 1993) (decided under former O.C.G.A. § 46-7-12).

Injury refers to person and loss refers to baggage or property. — In former Code 1933, § 68-612, the word "injury" seems to refer to the person, and the word "loss" to baggage or property. *Laster v. Maryland Cas. Co.*, 46 Ga. App. 620, 168 S.E. 128 (1933) (decided under former Code 1933, § 68-612); *LaHatte v. Walton*, 53 Ga. App. 6, 184 S.E. 742 (1936) (de-

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cided under former Code 1933, § 68-612).

Accident on highways not prerequisite to cause of action. — Mere reference to use of Georgia highways in some sections of the Code does not mean that a person has a cause of action under former O.C.G.A. § 46-7-12 only if an injury occurs on Georgia highways. *Johnson v. Woodard*, 208 Ga. App. 41, 429 S.E.2d 701 (1993) (decided under former O.C.G.A. § 46-7-12).

Until proper notice given to commission, insurance policy effective only for benefit of public. — Commission rules can only provide that until proper notice is given to the commission, an insurance policy is effective for the benefit of the public, not the insured in cases when the policy between the insured and the insurer has lapsed. *Smith v. National Union Fire Ins. Co.*, 127 Ga. App. 752, 195 S.E.2d 205 (1972) (decided under former Code 1933, § 68-612).

Legislature's purpose in giving commission right to fix bond amount. — Legislature's purpose to obviate necessity for double litigation by giving commission right to fix the amount of the bond and to prescribe provision thereof. *Laster v. Maryland Cas. Co.*, 46 Ga. App. 620, 168 S.E. 128 (1933) (decided under former Code 1933, § 68-612).

Extent of coverage under policy issued pursuant to this section. — Provision in a policy issued pursuant to the provisions of former Code 1933, § 68-612, that the policy covered the operation of automobiles and motor vehicles which were used only for the transportation of passengers for compensation purposes and operated on schedule over routes authorized by the commission covered motor vehicles not only when actually engaged in the transportation of passengers over scheduled routes, but covered such motor vehicles when used for any purpose or engaged in any act essential to the operation of the motor vehicle as a motor common carrier in the transportation of passengers for compensation over scheduled routes. *American Fid. & Cas. Co. v. McWilliams*, 55 Ga. App. 658, 191 S.E. 191 (1937) (decided under former Code 1933, § 68-612).

Evidence of policy limit. — Trial court did not abuse the court's discretion in denying appellees' motion for mistrial when counsel incorrectly asked witness about policy limit but before witness could answer opposing counsel objected; no evidence of the insurance policy limit was introduced by the unanswered question; and the trial court gave prompt curative instructions. *Ashley v. Goss Bros. Trucking*, 269 Ga. 449, 499 S.E.2d 638 (1998) (decided under former O.C.G.A. § 46-7-12).

Failure to list vehicle limited liability. — When the truck involved in a collision was not listed as a covered auto under an insurance policy issued by the insurer that filed a certificate of insurance for a carrier, the insurer's liability was limited to the minimum compulsory liability limits as established pursuant to former O.C.G.A. § 46-7-12, not the maximum limits of the policy. *Kinard v. National Indem. Co.*, 225 Ga. App. 176, 483 S.E.2d 664 (1997), *aff'd sub nom.*, *Ross v. Stephens*, 269 Ga. 266, 496 S.E.2d 705 (1998) (decided under former O.C.G.A. § 46-7-12).

Former Code 1933, § 68-612 was designed to protect strangers to motor carriers, not those who, although receiving paychecks from a lessor are involved in the operations of the carrier as if they were employees. *White v. Excalibur Ins. Co.*, 599 F.2d 50 (5th Cir.), *cert. denied*, 444 U.S. 965, 100 S. Ct. 452, 62 L. Ed. 2d 377 (1979) (decided under former Code 1933, § 68-612).

Personnel deemed statutory employees to ensure carrier's responsibility for public safety. — Because the carrier now has both a legal right and duty to control vehicles operated for the carrier's benefit, the employees of the vehicle-lessor are deemed statutory employees of the lessee-carrier to the extent necessary to insure the carrier's responsibility for the public safety just as if the lessee-carrier were the owner of the vehicles. *White v. Excalibur Ins. Co.*, 599 F.2d 50 (5th Cir.), *cert. denied*, 444 U.S. 965, 100 S. Ct. 452, 62 L. Ed. 2d 377 (1979) (decided under former Code 1933, § 68-612).

Contractual release and indemnity provision. — Application of the release

and indemnity provision in an independent contractor agreement between a first driver and a common carrier did not violate the public policy of Georgia as it was not the purpose of former O.C.G.A. § 46-7-12, which was similar to 49 C.F.R. § 387.15, to make an insurer for a common carrier liable when a judgment could not be recovered against the carrier itself; based on the first driver's contractual relationship with the common carrier, the first driver was not a member of the general public meant to be protected by former § 46-7-12. *Coleman v. B-H Transfer Co.*, 284 Ga. 624, 669 S.E.2d 141 (2008) (decided under former O.C.G.A. § 46-7-12).

Insurer subject to direct action by third parties injured by virtue of motor carrier's negligence. — Court of appeals erred in affirming an order granting an insurer's motion for summary judgment in the insurer's action seeking a declaration that a car accident involving a driver and a dump truck driver was not covered under the insurance policy the insurer issued to a motor carrier, which was the driver's employer, because the insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the motor carrier's negligence since the motor carrier sought insurance coverage from the insurer, the insurer was on notice of the insurer's status as a motor carrier and of the insurer's need to obtain motor carrier coverage, and the motor carrier was not informed of nor otherwise had reason to believe that the policy fell short of the coverage the insurer was required by law to maintain; because any provisions in the insurance policy issued to the motor carrier that would serve to reduce or negate the insurer's obligations to the motoring public under the Act were void and of no effect, the radius-of-use limitation, which purported to exclude from coverage any incident occurring more than 50 miles from a city, was invalid, and the insurer was subject to liability up to the policy limit. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former Code 1933, § 68-612).

Nature of liability of carrier and insurer. — Liability against the insurer

carrier is *ex contractu* and the liability against (the insured) is *ex delicto*. The insurer and the carrier are neither joint tortfeasors nor joint contractors. *Farley v. Continental Ins. Co.*, 150 Ga. App. 389, 258 S.E.2d 8 (1979) (decided under former Code 1933, § 68-612).

Permissibility of joinder of tort and contract actions. — Former Code 1933, § 68-612 allowed the joinder of a tort action against a carrier with a contract action against the carrier's insurer-in-lieu-of-bond. The only condition precedent to the joinder of the latter was that there be a viable action against the former. *Farley v. Continental Ins. Co.*, 150 Ga. App. 389, 258 S.E.2d 8 (1979) (decided under former Code 1933, § 68-612).

Independent action on policy itself. — An action on the policy itself against the insurer of a motor carrier was cognizable as an independent suit without joinder of the motor carrier. Such a suit was an independent *ex contractu* action on the policy itself and was nonancillary to the *ex delicto* action against the motor carrier. *Employers Ins. v. Dawson*, 194 Ga. App. 247, 390 S.E.2d 261, cert. denied, 194 Ga. App. 911, 390 S.E.2d 261 (1990) (decided under former O.C.G.A. § 46-7-12).

Direct action not authorized when accident occurred outside state. — Former O.C.G.A. § 46-7-12 did not authorize direct causes of action when the accident giving rise to the suit occurs outside the state of Georgia. *National Union Fire Ins. Co. v. Marty*, 197 Ga. App. 642, 399 S.E.2d 260 (1990) (decided under former O.C.G.A. § 46-7-12).

Even if underlying acts of negligence occur in Georgia, the purposes of former O.C.G.A. § 46-7-12 and the state's interest in ensuring and expediting compensation of injured parties were not implicated when the accident does not occur in the state. *Liberty Mut. Ins. Co. v. Dehart*, 206 Ga. App. 858, 426 S.E.2d 592 (1992) (decided under former O.C.G.A. § 46-7-12).

Permissibility of direct action against insurer of interstate carrier. — When a motor common carrier held certificates of public convenience and necessity from both the Interstate Commerce Commission for operation as an

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interstate carrier and the Georgia Public Service Commission as an intrastate carrier, an action for damages arising from an accident occurring in the carrier's intrastate operation and proceeding upon the insurance policy filed with the Georgia Public Service Commission could be brought against the motor carrier's insurer in the first instance under former Code 1933, § 68-612. The requirement of 49 U.S.C. § 315 that final judgment first be obtained against the carrier was not applicable. *Tucker v. Casualty Reciprocal Exch.*, 40 F. Supp. 383 (N.D. Ga. 1941) (decided under former O.C.G.A. § 46-7-12).

Amendment of complaint permissible to add liability insurer as defendant. — With leave of the court, a complaint can be amended to bring in an additional defendant, a liability insurer for a defendant motor carrier when counsel did not learn that the defendant was a common carrier and required to furnish adequate security until after the discovery was commenced. *Crews v. Blake*, 52 F.R.D. 106 (S.D. Ga. 1971) (decided under former Code 1933, § 68-612).

Effect on insurer of improper service on carrier. — Because the action against the insurance carrier was based on a contract with the public as the third party beneficiary of the contract and because subsection (e) of former O.C.G.A. § 46-7-12 authorized the joinder of the motor carrier and the insurer in the same action, it was error to dismiss the action against the insurer on the basis that the motor carrier was not properly served. *Ellerbee v. Interstate Contract Carrier Corp.*, 183 Ga. App. 828, 360 S.E.2d 280 (1987) (decided under former O.C.G.A. § 46-7-12).

Burden of proving vehicle exempt from definition of "motor contract carrier." — On the question of whether a carrier was a "motor contract carrier" under former O.C.G.A. § 46-1-1(8) such that the carrier's insurer was subject to the joinder provisions of subsection (e) of former O.C.G.A. § 46-7-12, the burden of proof was on the truck owner to show that the owner's truck came within the exemp-

tion from the definition of "motor contract carrier" in former § 46-1-1(8)(c) and there was no burden on plaintiffs to prove that the truck was not within the exemption. *Georgia Cas. & Sur. Co. v. Jernigan*, 166 Ga. App. 872, 305 S.E.2d 611 (1983) (decided under former O.C.G.A. § 46-7-12).

Exemption from motor contract carrier status must be established prior to liability. — If at any time up to and including the time of the collision with plaintiff, any of the requirements for the exemption from motor contract carrier status under former § 46-1-1(8)(c) had not been met, that motor vehicle would not have been engaged "exclusively" in the transportation of exempted products and would not qualify the owner for exemption from application of former O.C.G.A. § 46-7-12. *Georgia Cas. & Sur. Co. v. Jernigan*, 166 Ga. App. 872, 305 S.E.2d 611 (1983) (decided under former O.C.G.A. § 46-7-12).

Essential elements for allowing direct action against insurer. — Proof of filing of the insurance policy and approval by the public service commission was essential to allowing a direct action against the insurer of a motor contract carrier. *Progressive Cas. Ins. Co. v. Scott*, 188 Ga. App. 75, 371 S.E.2d 881 (1988) (decided under former O.C.G.A. § 46-7-12); *Kennedy v. Georgia-Carolina Refuse & Waste Co.*, 739 F. Supp. 604 (S.D. Ga. 1990) (decided under former O.C.G.A. § 46-7-12).

Step van used exclusively by the van's owner to transport its own products, and which was never held out for hire to the public and was not used or hired by the public for the transportation of either goods or people was neither a common nor contract carrier as those terms were defined in O.C.G.A. Title 46 and used in the direct action provisions contained in former O.C.G.A. § 46-7-12. *National Union Fire Ins. Co. v. Sorrow*, 202 Ga. App. 517, 414 S.E.2d 731 (1992) (decided under former O.C.G.A. § 46-7-12).

Cited in *A.G. Boone Co. v. Owens*, 54 Ga. App. 379, 187 S.E. 899 (1936); *Hodges v. Ocean Accident & Guar. Corp.*, 66 Ga. App. 431, 18 S.E.2d 28 (1941); *Gallahar v. George A. Rheman Co.*, 50 F. Supp. 655 (S.D. Ga. 1943); *American Fid. & Cas. Co.*

v. Farmer, 77 Ga. App. 166, 48 S.E.2d 122 (1948); Arnold v. Walton, 205 Ga. 606, 54 S.E.2d 424 (1949); Garden City Cab Co. v. Ransom, 86 Ga. App. 247, 71 S.E.2d 443 (1952); Cotton States Mut. Ins. Co. v. Keefe, 215 Ga. 830, 113 S.E.2d 774 (1960); Reeves v. South Am. Managers, Inc., 110 Ga. App. 49, 137 S.E.2d 700 (1964); Wolverine Ins. Co. v. Strickland, 116 Ga. App. 62, 156 S.E.2d 497 (1967); Barber v. Canal Ins. Co., 119 Ga. App. 738, 168 S.E.2d 868 (1969); Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339 (1969); St. Paul Fire & Marine Ins. Co. v. Mose Gordon Constr. Co., 121 Ga. App. 33, 172 S.E.2d 459 (1970); Isom v. Schettino, 129 Ga. App. 73, 199 S.E.2d 89 (1973); Seaboard Coast Line R.R. v. Freight Delivery Serv., Inc., 133 Ga. App. 92, 210 S.E.2d 42 (1974); Dove v. National Freight, Inc., 138 Ga. App. 144, 225 S.E.2d 477 (1976); Mercer v. Braswell, 140 Ga. App. 624, 231 S.E.2d 431 (1976); Homick v. American Cas. Co., 209 Ga. App. 156, 433 S.E.2d 318 (1993); McAdams v. United States Fire Ins. Co., 234 Ga. App. 324, 506 S.E.2d 679 (1998); Raintree Trucking Co. v. First Am. Ins. Co., 245 Ga. App. 305, 534 S.E.2d 459 (2000); Jackson v. Sluder, 256 Ga. App. 812, 569 S.E.2d 893 (2002); Cowart v. Widener, 296 Ga. App. 712, 675 S.E.2d 591 (2009).

Pleadings and Practice

1. In General

Section established independent cause of action against insurer. — In addition to a suit in tort against a negligent motor carrier, former O.C.G.A. § 46-7-12 established an independent cause of action against the carrier's insurer on behalf of a member of the public injured by the carrier's negligence. Thomas v. Bobby Stevens Hauling Contractors, 165 Ga. App. 710, 302 S.E.2d 585 (1983) (decided under former O.C.G.A. § 46-7-12).

Cause of action against insurer is in contract not tort. Gates v. L.G. DeWitt, Inc., 528 F.2d 405 (5th Cir.), modified, 532 F.2d 1052 (5th Cir. 1976) (decided under former Code 1933, § 68-612).

Distinction between liability of common carrier and obligation of in-

surer to injured. — Common carrier that negligently injures a person, and the insurance company that issues the carrier an indemnity policy under the provisions of former Code 1933, § 68-612, were neither joint tortfeasors nor joint contractors, so as to bring them within the provisions of Ga. Const. 1976, Art. VI, Sec. XIV, Para. IV, (Ga. Const. 1983, Art. VI, Sec. II, Para. IV) permitting suit to be instituted against joint obligors or joint tortfeasors in the county of either, since the liability of the carrier to the injured person arose from a tort in the commission of which the insurance company was not concerned, while the insurance company's obligation to pay the damages caused by the carrier's negligence was a contractual duty not assumed by the carrier. Bolin v. Pennsylvania Threshermen & Farmers Mut. Cas. Ins. Co., 92 Ga. App. 726, 89 S.E.2d 831 (1955) (decided under former Code 1933, § 68-612).

Venue in action when party is natural person engaged in business of common carrier. — While joinder of the carrier and insurance company in the same action was permitted by former Code 1933, § 68-612, a natural person engaged in the business of a common carrier cannot be joined with the insurance company in an action instituted elsewhere than in the county where the carrier resides. Bolin v. Pennsylvania Threshermen & Farmers Mut. Cas. Ins. Co., 92 Ga. App. 726, 89 S.E.2d 831 (1955) (decided under former Code 1933, § 68-612).

Statute of limitations commenced to run at time of commission of alleged tort. — In an action based upon the insurance contract, the statute of limitation commenced running at the time of the commission of the alleged tort, which was the basis of the insurer's contractual liability. Addington v. Ohio S. Express, Inc., 118 Ga. App. 770, 165 S.E.2d 658 (1968) (decided under former Code 1933, § 68-612).

Not a special statutory proceeding. — Former Code 1933, § 68-612 was not a special statutory proceeding excluded from the purview of O.C.G.A. T. 9, C. 11. Continental Ins. Co. v. Mercer, 130 Ga. App. 339, 203 S.E.2d 297 (1973) (decided

Pleadings and Practice (Cont'd)**1. In General (Cont'd)**

under former Code 1933, § 68-612).

Effect on insurer of improper service on carrier. — Fact that an interstate motor carrier had not been properly served did not mandate that the carrier's insurer also be dismissed. *Ellerbee v. Interstate Contract Carrier Corp.*, 183 Ga. App. 828, 360 S.E.2d 280 (1987) (decided under former O.C.G.A. § 46-7-12).

2. Proof Requirements

Coverage must be proved in actions when insurer is joined; if not, no verdict and judgment can be sustained against the insurer. *St. Paul Fire & Marine Ins. Co. v. Fleet Transp. Co.*, 116 Ga. App. 606, 158 S.E.2d 476 (1967) (decided under former Code 1933, § 68-612).

Sustaining of actionable injury is condition precedent to action on policy. — Sustaining of actionable injury was, under former O.C.G.A. § 46-7-12, the only condition precedent to an action on the policy. When actionable injury was alleged in an action on the policy, the terms of the statute were complied with, and the petitioner upon proper proof of the injury is entitled to recover on the policy. The cause of action was not on the tort, but on the contract by alleging the occurrence of the condition precedent required by the statute, which statute was an integral part of the contract of insurance. *Great Am. Indem. Co. v. Vickers*, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612); *Addington v. Ohio S. Express, Inc.*, 118 Ga. App. 770, 165 S.E.2d 658 (1968) (decided under former Code 1933, § 68-612).

Proof required for direct action against insurer. — Proof that a policy was filed and approved by the Public Service Commission was required in order to maintain a direct action against the insurer of a contract motor carrier. *Canal Ins. Co. v. Farmer*, 222 Ga. App. 539, 474 S.E.2d 732 (1996) (decided under former O.C.G.A. § 46-7-12).

In a case arising from an automobile crash, while former O.C.G.A. § 46-7-12 provided a direct action against an insurer of a common carrier, and served as a

sort of surety bond to protect the public, a plaintiff's claim against the insurer of the other driver's employer failed because the plaintiff did not plead that the employer was a common carrier or that the insurer's policy had been filed with, much less approved by, the Public Service Commission. *Lee v. Huttig Bldg. Prods.*, No. 1:04-CV-195 (WLS), 2005 U.S. Dist. LEXIS 22364 (M.D. Ga. Sept. 16, 2005) (decided under former O.C.G.A. § 46-7-12).

Applicability and interstate commerce. — In an action against the driver of a tractor-trailer and the driver's insurer, when neither a bond nor an insurance policy had been filed with the commission and the driver was not registered with the commission as a motor carrier, no direct action against the insurer was allowable. *Lockhart v. Southern Gen. Ins. Co.*, 231 Ga. App. 311, 498 S.E.2d 161 (1998) (decided under former O.C.G.A. § 46-7-12).

Direct action statute did not apply to plaintiff's cause of action because the action arose out of interstate commerce, and even if the statute had applied, the plaintiff would not have been able to prove that the Public Service Commission had approved the insurance policy, a prerequisite to a direct action under former O.C.G.A. § 46-7-12. *Dundee Mills, Inc. v. John Deere Ins. Co.*, 248 Ga. App. 39, 545 S.E.2d 604 (2001) (decided under former O.C.G.A. § 46-7-12).

For recovery, necessary to show injury was caused by negligence of principal or agents. — In order to authorize a recovery in an action brought on a bond or insurance policy it would be necessary to show that the injury complained of was caused by the negligence of the principal in the bond, the principal's agents, or representatives, in the operation of the described automobile. *Zachry v. City Council*, 78 Ga. App. 746, 52 S.E.2d 339 (1949) (decided under former Code 1933, § 68-612).

Mere proof of liability coverage insufficient. — Since former O.C.G.A. § 46-7-12 created a direct pre-judgment cause of action in contract against an insurer and did not merely provide a statutory exception to the procedural prohibi-

tion against joinder of a liability insurer as a party defendant in a tort action against its insured, it follows that mere proof that the allegedly negligent tortfeasor had liability coverage was not necessarily sufficient proof of the direct cause of action against the insurer itself. Such proof would fail to show that the injured party was a third-party beneficiary who had a direct pre-judgment cause of action in contract against the insurer itself. *Glenn McClendon Trucking Co. v. Williams*, 183 Ga. App. 508, 359 S.E.2d 351 (1987), cert. denied, 183 Ga. App. 906, 359 S.E.2d 351 (1988) (decided under former O.C.G.A. § 46-7-12).

Submission of policy limits to the jury. — Since the plaintiff in a motor collision suit against a common carrier and the carrier's insurer can prove the limits of coverage so as to sustain a judgment against the insurer without submitting the policy limits to the jury and since submission of the policy limits to the jury tended to prejudice the defendants, the Supreme Court of Georgia concluded that the objection of a defendant common carrier and the carrier's insurer to the submission of policy limits to the jury should have been sustained. Unless it was necessary, the amount of insurance coverage should not be placed before the jury. *Carolina Cas. Ins. Co. v. Davalos*, 246 Ga. 746, 272 S.E.2d 702 (1980) (decided under former Code 1933, § 68-612).

Status as "carrier." — Step van used exclusively by the van's owner to transport the owner's own products, and which was never held out for hire to the public and was not used or hired by the public for the transportation of either goods or people, was neither a common nor contract carrier as those terms were defined in O.C.G.A. Title 46 and used in the direct action provisions contained in former O.C.G.A. §§ 46-7-12 and 46-7-58. *National Union Fire Ins. Co. v. Sorrow*, 202 Ga. App. 517, 414 S.E.2d 731 (1992) (decided under former O.C.G.A. § 46-7-12).

Prescribed forms. — Summary judgment for the insurer was reversed, and the amended version of former O.C.G.A. § 46-7-12(c), requiring a common carrier to file prescribed forms evidencing insurance, was applied retroactively, permit-

ting a direct action against the insurer by an injured party for injuries suffered in a motor vehicle accident, despite the failure to file the prescribed form evidencing the insurance policy. *Devore v. Liberty Mut. Ins. Co.*, 257 Ga. App. 7, 570 S.E.2d 87 (2002) (decided under former O.C.G.A. § 46-7-12).

3. Joinder Issues

Joint action against carrier and insurer permissible. — Person who had been injured by the alleged negligence of the driver of a motor common carrier truck can maintain a joint action at law against the motor common carrier and the indemnity company from which such motor common carrier had procured a policy of indemnity insurance, and such action was not controlled by the general rule that an action *ex delicto* cannot be joined with an action *ex contractu*. *LaHatte v. Walton*, 53 Ga. App. 6, 184 S.E. 742 (1936) (decided under Ga. L. 1929, pp. 293, 297, § 5).

Former Code 1933, § 68-612 permitted a motor carrier and the carrier's insurance company to be joined in the same action as defendants. *Har-Pen Truck Lines v. Mills*, 378 F.2d 705 (5th Cir. 1967) (decided under former Code 1933, § 68-612).

Responsibility of insurance carrier. — Insurer was neither a joint tortfeasor nor responsible for the carrier's negligent conduct under a theory of vicarious liability; consequently, plaintiff's attempts to impute the carrier's negligence to the insurer were improper and prejudicial, as was the argument that the jury should base the jury's award on the insurer's treatment of plaintiff independent of the collision. *Myrick v. Stephanos*, 220 Ga. App. 520, 472 S.E.2d 431 (1996) (decided under former O.C.G.A. § 46-7-12).

Joinder not required. — While former O.C.G.A. § 46-7-12 permitted joinder of the carrier and the insurer in a suit by a member of the public who was injured by the negligence of a carrier, it did not require it. *Griffin v. Johnson*, 157 Ga. App. 657, 278 S.E.2d 422 (1981) (decided under former O.C.G.A. § 46-7-12).

Purpose of joinder. — Erroneous dismissal of motor carrier's liability insurer did not entitle accident victim to a new

Pleadings and Practice (Cont'd)**3. Joinder Issues (Cont'd)**

trial on liability and damages; provision allowing joinder of insurer was not intended to enhance the value of a third party's claim for damages; plaintiff had no separate claim against a motor carrier's insurer; the purpose of permitting joinder of the insurer in a claim against the carrier was to further the policy of the former Motor Carrier Act to protect the public against injuries caused by the carrier's negligence. *Andrews v. Yellow Freight Sys.*, 262 Ga. 476, 421 S.E.2d 712 (1992) (decided under former O.C.G.A. § 46-7-12).

Relationship to other statutes. — Insurer failed to meet the insurer's burden of showing that a company the insurer insured was not a "motor common carrier" or a "motor contract carrier" under former O.C.G.A. § 46-1-1(9)(C) when a tractor-trailer the company owned was involved in an accident because, although the insurer showed that the tractor-trailer was being used to haul timber products when the accident occurred, the insurer did not show that the tractor-trailer was used exclusively for that purpose, and the trial court erred when the court granted the insurer's motion for summary judgment on plaintiff's personal injury claims. *Jarrard v. Clarendon Nat'l Ins. Co.*, 267 Ga. App. 594, 600 S.E.2d 689 (2004) (decided under former O.C.G.A. § 46-7-12).

Joinder of insurer permitted but no limitation on amount of damages pled. — Former Code 1933, § 68-612 allowed the commission to fix the amount of bond or insurance coverage required of a carrier and the statute allowed a plaintiff to join as a party the insurance carrier who had issued a policy to meet the coverage requirement. However, when an insurer was joined as a party in an action against a carrier, the section did not limit the amount of damages which can be pled against the insurer to the minimum coverage required of carriers by the commission. *Herring v. Rabun Trucking Co.*, 147 Ga. App. 713, 250 S.E.2d 167 (1978) (decided under former Code 1933, § 68-612).

Existence of approved policy necessary for joinder. — Unless the applica-

bility of former O.C.G.A. § 46-7-12 was shown by evidence of the existence of a policy issued with the approval of the Public Service Commission, the general rule, that an insurer may not be joined as a party defendant with the insurer's insured when there had been no judgment previously obtained against the insured, was applicable. *Glenn McClendon Trucking Co. v. Williams*, 183 Ga. App. 508, 359 S.E.2d 351 (1987), cert. denied, 183 Ga. App. 906, 359 S.E.2d 351 (1988) (decided under former O.C.G.A. § 46-7-12).

Joinder for out-of-state collision. — Joinder was not prohibited merely because a collision occurred on a highway in another state. *Johnson v. Woodard*, 208 Ga. App. 41, 429 S.E.2d 701 (1993) (decided under former O.C.G.A. § 46-7-12).

Joinder of interstate carrier. — Insurer of motor carrier was joined in an action against a carrier operating under a certificate of convenience issued by the state and who was required to be, or could have been sued in Georgia. *Johnson v. Woodard*, 208 Ga. App. 41, 429 S.E.2d 701 (1993) (decided under former O.C.G.A. § 46-7-12).

When joinder of motor carrier's insurer was authorized. — In actions against a motor carrier, required by former Code 1933, § 68-612 to file such bond or insurance with the commission, joinder of the motor carrier's insurer was authorized, regardless of whether the carrier was operating in interstate or intrastate commerce at the time of the injury. *Harper Motor Lines v. Roling*, 218 Ga. 812, 130 S.E.2d 817 (1963) (decided under former Code 1933, § 68-612).

Motor carrier not exempt. — Insurer was properly joined in action against transportation company when the truck involved in the accident was registered as a motor carrier and at times hauled loads which were not exempt despite the truck's exempt cargo of produce at the time of the accident. *Smith v. Commercial Transp., Inc.*, 220 Ga. App. 866, 470 S.E.2d 446 (1996) (decided under former O.C.G.A. § 46-7-12).

In a wrongful death case, a motor carrier's insurer was subject to direct suit under the direct action statute, former O.C.G.A. § 46-7-12(c). The exemption for

motor vehicles used exclusively to carry dairy or agricultural products, former O.C.G.A. § 46-1-1(9)(C)(x), did not apply because the insured used a tractor to haul other products besides logs, although the insured hauled logs exclusively in the weeks prior to the accident. *Occidental Fire & Cas. Co. of N.C. v. Johnson*, 302 Ga. App. 677, 691 S.E.2d 589 (2010) (decided under former O.C.G.A. § 46-7-12).

Joinder not authorized. — Truck which was engaged exclusively in the transportation of potting soil was not a “motor common carrier” and former O.C.G.A. § 46-7-12(e) did not, therefore, authorize joinder of the truck’s insurer as a defendant in a suit against the insured. *National Indem. Co. v. Tatum*, 193 Ga. App. 698, 388 S.E.2d 896 (1989) (decided under former O.C.G.A. § 46-7-12).

Truck which was engaged exclusively in the transportation of gravel, crushed stone, plant mix road material or road base materials was not a “motor common carrier” and former O.C.G.A. § 46-7-12(e) did not, therefore, afford plaintiff the right to join the truck’s insurer as a defendant in a suit against the insured. *Bailey v. Occidental Fire & Cas. Co.*, 193 Ga. App. 710, 388 S.E.2d 899 (1989) (decided under former O.C.G.A. § 46-7-12).

Although former O.C.G.A. § 46-7-12 provided for joinder of an insurer when that insurer had potential liability under an insurance policy, the statute did not create a cause of action against an insurer which, under the terms of the insurer’s policy, cannot be liable with respect to the accident in question. *McMillon v. Empire Fire & Marine Ins. Co.*, 209 Ga. App. 378, 433 S.E.2d 429 (1993) (decided under former O.C.G.A. § 46-7-12).

Injured person could not join a motor carrier’s insurer in an action against the carrier since the carrier was not registered in Georgia and had not filed an insurance policy with the commission. *Caudill v. Strickland*, 230 Ga. App. 644, 498 S.E.2d 81 (1998) (decided under former O.C.G.A. § 46-7-12).

When joinder of parties not permissible. — In the absence of statutory provisions to the contrary, an insurance company, issuing an ordinary indemnity policy, cannot be joined as a party defen-

dant with a tortfeasor in order to “fix the liability” of the insurance company. *Arnold v. Walton*, 205 Ga. 606, 54 S.E.2d 424 (1949) (decided under former Code 1933, § 68-612).

No joinder of defendant not in privity with insurance company when carrier and company joined. — When a motor carrier and the carrier’s insurance company were joined as defendants, no other defendant may be joined who was not in privity with the insurance company. *Har-Pen Truck Lines v. Mills*, 378 F.2d 705 (5th Cir. 1967) (decided under former Code 1933, § 68-612).

No joinder of insurer in action against carrier for injuries caused in another state. — Insurance carrier may not be joined under former Code 1933, § 68-612 as a defendant with a motor common carrier licensed to do intrastate and interstate business in an action brought in this state by a passenger on an interstate journey for personal injuries caused by the carrier’s negligence in another state. *Rogers v. Atlantic Greyhound Corp.*, 50 F. Supp. 662 (S.D. Ga. 1943).

Petition not subject to dismissal on misjoinder grounds. — Petition for damages joining as defendants a common carrier for hire by motor truck, the truck’s driver, and the truck’s insurer, under former Code 1933, § 68-612, was not subject to demurrer (now motion to dismiss) on the ground that there was a misjoinder of parties and causes of action. *Pilot Freight Carriers, Inc. v. Parks*, 80 Ga. App. 137, 55 S.E.2d 746 (1949) (decided under former Code 1933, § 68-612).

No misjoinder when action against proper parties. — It being alleged that the driver of the motor vehicle was engaged in carrying out the duties of the driver’s employment as a driver for common carrier at the time of the accident, and it appearing that the casualty company was the insurance carrier of the motor carrier, the action was properly brought against the three named defendants, and there was no misjoinder. *Atlanta-Asheville Motor Express v. Dooley*, 78 Ga. App. 265, 50 S.E.2d 822 (1948) (decided under former Code 1933, § 68-612).

Construction of joinder provisions of this Code section. — The 1937

Pleadings and Practice (Cont'd)**3. Joinder Issues (Cont'd)**

amendment (Ga. L. 1937, p. 730) to the original statute must also be strictly construed, and it does not expressly or otherwise provide for the joining in one action of an action ex contractu against an insurance company and an action in tort against a third person in no way connected with the insurance company. *Reeves v. McHan*, 78 Ga. App. 305, 50 S.E.2d 787 (1948) (decided under former Code 1933, § 68-612).

4. Other Procedural Issues

Suing insurance carrier first despite policy provisions to contrary. — Insurance carrier could be sued without first obtaining judgment against common carrier notwithstanding provisions in the policy to the contrary. *Maryland Cas. Co. v. Dobson*, 57 Ga. App. 594, 196 S.E. 300 (1938) (decided under former Code 1933, § 68-612).

Bringing suit against carrier's insurer. — Member of public who was injured by negligence of motor common carrier need not obtain judgment against the carrier as condition precedent to bringing suit against carrier's insurer, any contractual agreement between the insurer and the carrier to the contrary notwithstanding. *Griffin v. Johnson*, 157 Ga. App. 657, 278 S.E.2d 422 (1981) (decided under former O.C.G.A. § 46-7-12).

Suit against insurer did not require joinder of motor carrier. — An action on the policy itself against the insurer of a motor carrier was cognizable as an independent suit without joinder of the motor carrier. *Thomas v. Bobby Stevens Hauling Contractors*, 165 Ga. App. 710, 302 S.E.2d 585 (1983) (decided under former O.C.G.A. § 46-7-12).

Insurer subject to action on policy by injured member of public directly. — Since bond or policy under former Code 1933, § 68-612 was given for the protection of the public, and the policy was one against liability, and since the intent and meaning of the statute permitted an action thereon jointly against the motor carrier and the surety on the bond or the insurer in the policy, the provisions of the

section were read into the policy and supersede any provision therein to the contrary. Accordingly, the insurer was subject to action by an injured member of the public directly on the policy, without the necessity of first suing and obtaining judgment against the carrier. *Great Am. Indem. Co. v. Durham*, 54 Ga. App. 353, 187 S.E. 891 (1936) (decided under former Code 1933, § 68-612).

Joint or separate actions against parties. — All three parties — the driver, the carrier, and the insurance company — may be joined and any one of such parties may be sued alone and thereby bind the company for payment of eventual judgment. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Breach of policy conditions may not defeat claims when actual notice to company of actions. — Under former Code 1933, § 68-612 a breach of the policy conditions between the insured and the company, may not defeat the public third-parties claims, when there was actual notice to the company of the actions. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Insurer was absolutely liable for any unsatisfied judgment which may be obtained against the insurer's insured whether or not the insurer's insured breached the conditions of the policy. *Seawheels, Inc. v. Bankers & Shippers Ins. Co.*, 175 Ga. App. 528, 333 S.E.2d 650 (1985) (decided under former O.C.G.A. § 46-7-12).

Bond or Indemnity Insurance

Filing of bond or indemnity insurance with commissioner required. — Former Code 1933, § 68-612 required a motor common carrier to file a bond or policy of indemnity insurance with commission to protect the public against in-

jury caused by its negligence, and permits suit against the motor carrier and the insurer in the same action. *Gates v. L.G. DeWitt, Inc.*, 528 F.2d 405 (5th Cir.), modified, 532 F.2d 1052 (5th Cir. 1976) (decided under former Code 1933, § 68-612).

Named insured. — Trial court properly found that a corporation was the named insured, notwithstanding the policy's identification of the named insured as an individual, doing business as a trade name, as the insurer filed a certificate of insurance with the Georgia Public Service Commission pursuant to former O.C.G.A. § 46-7-12(a) stating that the insurer had insured the corporation, doing business as the trade name. *Hartford Cas. Ins. Co. v. Smith*, 268 Ga. App. 224, 603 S.E.2d 298 (2004) (decided under former O.C.G.A. § 46-7-12).

Approved policy is in nature of substitute surety bond. — If the carrier's insurance policy was approved by the commission in accordance with former O.C.G.A. § 46-7-12, the policy was in the nature of a substitute surety bond, and the insurer was absolutely liable for any loss occasioned by the insurer's insured, any provisions in the policy, or in any rider attached thereto, to the contrary notwithstanding. *American Motorists Ins. Co. v. King Shrimp Co.*, 199 Ga. App. 847, 406 S.E.2d 273 (1991) (decided under former O.C.G.A. § 46-7-12).

Independent cause of action against insurer. — In addition to a suit in tort against a negligent motor carrier, former O.C.G.A. § 46-7-12 established an independent cause of action against the carrier's insurer on behalf of a member of the public injured by the carrier's negligence. *Thomas v. Bobby Stevens Hauling Contractors*, 165 Ga. App. 710, 302 S.E.2d 585 (1983) (decided under former O.C.G.A. § 46-7-12).

Purpose of Code section. — Purposes of former Code 1933, § 68-612 were to protect the members of the public who were injured by the operation of the common carrier's vehicles and the insurance contract may not defeat this public policy by conditions to which the state and public were not a party. This was a prerequisite to doing business in this state and on the state's highways either directly or by

agent employees. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), aff'd, 402 F.2d 988 (5th Cir. 1968), cert. denied, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Indemnity insurance policy was not for the benefit of the insured but for the sole benefit of those who may have a cause of action for damages for the negligence of the motor common carrier. Such a policy was in the nature of a substitute surety bond and created liability in the insurer regardless of the insured's breach of the conditions of the policy. *Progressive Cas. Ins. Co. v. Bryant*, 205 Ga. App. 164, 421 S.E.2d 329 (1992) (decided under former O.C.G.A. § 46-7-12).

Three classes of protection. — Former Code 1933, § 68-612 was designed to protect three classes against financial liability of motor common carriers to respond in damages for the negligent conduct of the business of motor common carriers. First, motor common carriers of passengers; second, motor common carriers of freight; and third, the public (when neither the relationship of carrier and passenger or carrier and shipper exists). *American Cas. Co. v. Southern Stages*, 70 Ga. App. 22, 27 S.E.2d 227 (1943) (decided under former Code 1933, § 68-612).

Protection of public is primary purpose of requiring bond or security. — Primary purpose of requiring a bond, policy of insurance, or other security as a condition to the operation of public service motor vehicles for hire was for the protection of the public, by assuring those who were injured, in person or property, through the negligent operation of such vehicles, compensation for the injuries or damages sustained. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), aff'd, 402 F.2d 988 (5th Cir. 1968), cert. denied, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Bonds provided for in this section for benefit of public. — Bond or indemnity insurance was required for benefit of

Bond or Indemnity Insurance (Cont'd)

passengers and public; the passengers and the public being beneficiaries which the statute sought to protect and insure, the indemnity insurance policy required by former Code 1933, § 68-612 was one of insurance against liability, and not insurance against loss by common carrier. *Laster v. Maryland Cas. Co.*, 46 Ga. App. 620, 168 S.E. 128 (1933); *LaHatte v. Walton*, 53 Ga. App. 6, 184 S.E. 742 (1936) (decided under former Code 1933, § 68-612).

According to the language and patent intentment of former Code 1933, § 68-612, the bonds provided for herein are solely for the benefit of those persons who by reason of the negligence of the carrier, the carrier's servants or agents, may have a cause of action for damages, such bonds being "for the benefit of and subject to action thereon by any person who shall sustain actionable injury or loss protected thereby." *Great Am. Indem. Co. v. Vickers*, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612).

Definition of indemnity insurance policy. — Policy of insurance under former Code 1933, § 68-612 was not one of indemnity against loss as that term was generally understood; but was a direct and primary obligation to any person who shall sustain actionable injury or loss by reason of the negligence of the insured in the operation of the insured's motor vehicles insured under the policy. The sustaining of actionable injury was, under the statute, the only condition precedent to an action on the policy. *Great Am. Indem. Co. v. Vickers*, 183 Ga. 233, 188 S.E. 24 (1936); *Shapiro v. Aetna Cas. & Sur. Co.*, 234 F. Supp. 41 (N.D. Ga. 1963), *aff'd*, 337 F.2d 237 (5th Cir. 1964); *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Indemnity and not liability insurance required by this section. — If the insurer issued a single policy for more

than the statutory minimum, the plaintiff suing under former Code 1933, § 68-612 was not limited to a judgment against that insurer for the minimum. The insurance required by that section was indemnity insurance, not liability insurance. It would create multiple litigation to require the plaintiffs to recover from the indemnitor the statutory minimum in the initial action and file later actions for excess amounts. *Herring v. Rabun Trucking Co.*, 147 Ga. App. 713, 250 S.E.2d 167 (1978) (decided under former Code 1933, § 68-612).

Statute referred to direct liability policy. — In spite of the use of the phrase "indemnity insurance," former Code 1933, § 68-612 referred to a direct liability policy rather than indemnity in the true sense. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969) (decided under former Code 1933, § 68-612).

Policy issued is policy of insurance against liability. — Insurance policy issued to a motor common carrier, with the approval of the commission, under the provisions of former Code 1933, § 68-612, which provided that the policy was one "for the protection of the public against injuries proximately caused by the negligence of such motor carrier, its servants or agents," was a policy of insurance against liability, any provisions in the policy, or in any rider attached thereto, to the contrary notwithstanding, and an action may be brought upon the policy directly against the insurer by any member of the public, for the recovery of damages proximately caused by the negligence of the motor common carrier in the operation of one of the carrier's motor trucks along a public highway of this state, without first having obtained a judgment establishing liability for such negligence against the motor carrier, and without making the motor carrier a party to the action. *Great Am. Indem. Co. v. Vickers*, 53 Ga. App. 101, 185 S.E. 150, *aff'd*, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612).

Extent of coverage of security bond or policy. — Security bond or policy ordi-

narily covers only injuries or damages which result from the careless, negligent, or improper operation of the motor carrier's vehicles. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Obligations of former Code 1933, § 68-612 clearly superseded any policy provision. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

No impairment of public's statutory rights by stipulations between parties to security contract. — Under the bond or policy, the public has statutory rights which cannot be impaired by stipulations between the immediate parties to the security contract. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Incorporation of provisions into insurance policy. — Policy with a rider upon the policy placed there by the commission pursuant to the provisions of former Code 1933, § 68-612 becomes a statutory policy, and the provisions of that section respecting the character of the policy and the liability of the parties, were read into the policy and supersede any provisions, if any, to the contrary, either in the policy or in the rider attached thereto. *Great Am. Indem. Co. v. Vickers*, 53 Ga. App. 101, 185 S.E. 150, *aff'd*, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612).

Incorporation of provisions into bond filed. — Provision that the bond given by the carrier must be for the protection of the public against injuries proximately caused by the carriers' negligence, must, when the bond was approved by the commission as required by former Code

1933, § 68-612 as a condition precedent to the issuance of the certificate to the carrier, be read into the bond and become one of the provisions thereof, anything in the bond or riders attached thereto to the contrary notwithstanding. *Great Am. Indem. Co. v. Vickers*, 53 Ga. App. 101, 185 S.E. 150, *aff'd*, 183 Ga. 233, 188 S.E. 24 (1936) (decided under former Code 1933, § 68-612).

Bond or insurance provisions contrary to statute without force or effect. — Bond or policy of indemnity insurance given under former Code 1933, § 68-612 must conform to its requirements, and a provision contained therein contrary to such requirements was without force and effect. *Maryland Cas. Co. v. Dobson*, 57 Ga. App. 594, 196 S.E. 300 (1938) (decided under former Code 1933, § 68-612).

Substitution of indemnity policy by carrier. — When a carrier is allowed to substitute a policy of indemnity insurance, such policy must substantially conform to all of the provisions of the statute relating to bonds. *Seawheels, Inc. v. Bankers & Shippers Ins. Co.*, 175 Ga. App. 528, 333 S.E.2d 650 (1985) (decided under former O.C.G.A. § 46-7-12).

Legislative intent that insurer stand in shoes of motor common carrier. — It was the legislative intent in passing former Code 1933, § 68-612 that the insurer carrier was to stand in the shoes of the motor common carrier and be liable in any instance of negligence when the motor common carrier was liable. *St. Paul Fire & Marine Ins. Co. v. Fleet Transp. Co.*, 116 Ga. App. 606, 158 S.E.2d 476 (1967) (decided under former Code 1933, § 68-612).

When judgment creditor may recover. — One who obtains a judgment against the insured and then seeks to enforce the judgment against the insurer occupies a like status to the insured; one derives one's rights under the policy through the insured, and one is entitled to recover under the policy only if it appears that all conditions precedent have been complied with. *Commercial Union Ins. Co. v. Bradley Co.*, 186 Ga. App. 610, 367 S.E.2d 820 (1988) (decided under former O.C.G.A. § 46-7-12).

Bond or Indemnity Insurance (Cont'd)

Liability of surety or insurer was joint and several with the liability of the owner or operator of the motor vehicle. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969), commented on in 6 Ga. St. B.J. 225 (1969); (decided under former Code 1933, § 68-612).

Liability of insurance carrier extends to existence of relation of common carrier and passenger. — When an indemnity insurance policy was executed under the provisions of former Code 1933, § 68-612, containing the words, "resulting from the negligent operation, maintenance or use of motor vehicles," such words would not be construed to limit liability for negligence of the driver of a passenger vehicle while such vehicle was in motion only. This being a statutory provision, the provisions of the policy were superseded by the terms of the statute. The endorsement of the commission of such words in a rider attached to the policy was construed to mean that the liability of the insurance carrier extended to and included injuries received by a passenger, caused by the negligence of such motor carrier, the carrier's servants or agents, during the existence of the relation of common carrier and passenger, and until such relation was terminated in some manner provided by law. *American Cas. Co. v. Southern Stages*, 70 Ga. App. 22, 27 S.E.2d 227 (1943) (decided under former Code 1933, § 68-612).

Liability of insurance carrier not limited to negligence of carrier only when vehicle in motion. — Former Code 1933, § 68-612 nowhere provided that the liability of the insurance carrier be limited to the negligence of the motor common carrier, the carrier's servants or agents, only when the vehicle was in motion. *American Cas. Co. v. Southern Stages*, 70 Ga. App. 22, 27 S.E.2d 227 (1943) (decided under former Code 1933, § 68-612).

No insurance required for carrier's vehicles while being used outside em-

ployment. — Plain reading of the statute will not support a holding that a carrier must provide individual liability coverage for the carrier's servants or agents while those agents are operating the carrier's vehicles outside the scope of their employment. *Great W. Cas. Co. v. Norris*, 734 F.2d 697 (11th Cir. 1984) (decided under former O.C.G.A. § 46-7-12).

Liability of insurance carrier on policy is ancillary to that of common carrier. — While the "cause of action" (or statement of a claim) was not on the tort, nevertheless, the tort constituted the real cause of action, and the liability of the insurance carrier on the carrier's policy, issued as required by law, was merely ancillary to that of the common carrier. *Addington v. Ohio S. Express, Inc.*, 118 Ga. App. 770, 165 S.E.2d 658 (1968) (decided under former Code 1933, § 68-612).

Insurance carrier may not contract for less liability than imposed by statute. — Under former Code 1933, § 68-612, it was the legislative intent that the insurance carrier was to stand in the shoes of the motor common carrier of passengers and be liable to the passenger in any instance of negligence when the motor common carrier was liable. The statute nowhere remotely expressed or implied that when an insurance carrier undertook for hire to stand sponsor for the negligent acts of a motor common carrier of passengers under the general law governing this relationship such insurance carrier may contract for a less liability than that which the statute imposed upon the motor common carrier itself. To give the statute such a construction would be to render the statute subservient to the conditions of the insurance policy and not the insurance policy subservient to the provisions of the statute. *American Cas. Co. v. Southern Stages*, 70 Ga. App. 22, 27 S.E.2d 227 (1943) (decided under former Code 1933, § 68-612).

Nothing in former Code 1933, § 68-612 limited direct liability of insurer of carrier, when joined as a defendant in an action against a carrier to the minimum bond or insurance coverage required of carriers by the commission. *Herring v. Rabun Trucking Co.*, 147 Ga. App. 713, 250 S.E.2d 167 (1978) (decided under

former Code 1933, § 68-612).

No liability of insurer where insured carrier not liable. — It was not the purpose of former Code 1933, § 68-612 to make an insurance company, which had issued the carrier a policy of indemnity insurance in lieu of a bond, liable when the insured carrier itself was not liable. *Robbins v. Liberty Mut. Ins. Co.*, 113 Ga. App. 393, 148 S.E.2d 172 (1966) (decided under former Code 1933, § 68-612).

No actionable injury established as a result of insured's indemnification. — In a negligence suit arising from a tractor trailer collision, a trial court erred by failing to grant summary judgment to a transfer company's insurer because an indemnity agreement between the suing driver and the transfer company made it impossible for the suing driver to obtain a judgment against the transfer company; therefore, there was no actionable injury, pursuant to former O.C.G.A. § 46-7-12, for which the transfer company's insurer could be held liable. *Coleman v. B-H Transfer Co.*, 290 Ga. App. 503, 659 S.E.2d 880 (2008), *aff'd*, 284 Ga. 624, 669 S.E.2d 141 (2008) (decided under former O.C.G.A. § 46-7-12).

Liability probably does not extend to punitive damages. — Liability under former Code 1933, § 68-612 would probably not extend to punitive damages. As a factual probability, attorneys fees would logically fall into the same classification as being uncollectible from the company. *Spicer v. American Home Assurance Co.*, 292 F. Supp. 27 (N.D. Ga. 1967), *aff'd*, 402 F.2d 988 (5th Cir. 1968), *cert. denied*, 394 U.S. 946, 89 S. Ct. 1275, 22 L. Ed. 2d 479 (1969) (decided under former Code 1933, § 68-612).

Duty of issuer of liability surety bond. — Liability surety bond, when not supplanted by an insurance policy, was similar to a motor vehicle liability insurance policy in that the bond also provides protection to the general public for damage to person or property arising from negligent acts or omissions of the motor carrier for whom it was issued. The issuer of the bond was obligated to provide the minimum no-fault coverage afforded under former O.C.G.A. § 33-34-4, notwithstanding any provisions of the contract or

bond. *Homick v. American Cas. Co.*, 202 Ga. App. 831, 415 S.E.2d 669, *cert. denied*, 202 Ga. App. 906, 415 S.E.2d 669 (1992) (decided under former O.C.G.A. § 46-7-12).

Liability of insurance carrier limited. — Liability of an insurer of a motor common carrier for an actionable loss caused by a vehicle not specifically described in the insurance policy was limited to the minimum limits established by rule of the commission. *Ross v. Stephens*, 269 Ga. 266, 496 S.E.2d 705 (1998) (decided under former O.C.G.A. § 46-7-12).

Bond or indemnity insurance. — Minimum compulsory liability limits established by a rule of the Public Service Commission were applicable to personal injury claims asserted by passengers in a tractor-trailer, when the passengers sought recovery up to minimum limits of \$100,000/\$300,000 as established by the rule; the claims were not subject to the lower limits established by former O.C.G.A. § 40-9-2(5)(A) (see now O.C.G.A. § 33-7-11(a)(1)(A)), even though the tractor-trailer was a freight carrier and not a passenger carrier. *Guinn Transp., Inc. v. Canal Ins. Co.*, 234 Ga. App. 235, 507 S.E.2d 144 (1998) (decided under former O.C.G.A. § 46-7-12).

Notice of cancellation. — When a Form E endorsement filed with the Georgia Public Service Commission provided that an insurance company had issued the insurer's insured an insurance policy and the policy lapsed before an incident giving rise to liability on the part of the insured and before proper notice of cancellation was given to the Commission, the insurer's liability to a third party injured by the insured was based on the policy itself as opposed to liability based on the minimum coverage imposed by law. *Progressive Preferred Ins. Co. v. Ramirez*, 277 Ga. 392, 588 S.E.2d 751 (2003) (decided under former O.C.G.A. § 46-7-12).

Failure to file notice of cancellation. — Insurer's failure to file a notice of cancellation with the Georgia Department of Motor Vehicle Safety (DMVS) did not render the insurer liable under the direct action statute, former O.C.G.A. § 46-7-12, because the former insurer had never obtained a permit of authority under former

Bond or Indemnity Insurance (Cont'd)

O.C.G.A. § 46-7-3 to operate as a carrier in Georgia, the insurer could not have filed either a certificate of insurance or a notice of cancellation with the DMVS. *Kolencik v. Stratford Ins. Co.*, No. 1:05-cv-0007-GET, 2005 U.S. Dist. LEXIS 34956 (N.D. Ga. Nov. 28, 2005) (decided under former O.C.G.A. § 46-7-12).

Interstate Carriers

Section applicable to interstate carriers. — Subsection (e) of former O.C.G.A. § 46-7-12 applied to interstate as well as intrastate carriers; thus, a motorist injured in an accident with a tractor trailer owned by a motor carrier engaged solely in interstate commerce could maintain a direct action against the insurer of the motor carrier. *Williams v. Southern Drayage, Inc.*, 213 Ga. App. 895, 446 S.E.2d 758 (1994) (decided under former Code 1933, § 68-612).

Carrier registered with the Public Service Commission was not exempt from subsection (e) of former O.C.G.A. § 46-7-12 simply because it engaged only in interstate commerce. Additionally, the federal law did not preempt the Georgia definition of motor carrier for purposes of a personal injury action against the carrier. *Xpress Cargo Sys. v. McMath*, 225 Ga. App. 32, 481 S.E.2d 885 (1997) (decided under former O.C.G.A. § 46-7-12).

Section inapplicable to causes arising out of interstate commerce. — Although former O.C.G.A. § 46-7-12 authorized a shipper to bring a direct action against the insurer who provided liability coverage to a motor common carrier, the section did not apply to a cause of action which arose out of interstate commerce. *Commercial Union Ins. Co. v. Bradley Co.*, 186 Ga. App. 610, 367 S.E.2d 820 (1988) (decided under former O.C.G.A. § 46-7-12).

No conflict with congressional regulation of motor carriers. — Former Code 1933, § 68-612 did not conflict with congressional regulation of motor carriers engaged in interstate commerce, but was a reasonable and valid requirement imposed upon those who seek to do an intra-

state motor carrier business in Georgia. *Acme Freight Lines v. Blackmon*, 131 F.2d 62 (5th Cir. 1942) (decided under former Code 1933, § 68-612).

Federal Aviation Administration Authorization Act did not preempt statute. — Federal Aviation Administration Authorization Act prohibited a state from enacting or enforcing a law or regulation related to “a price, route, or service” of any motor carrier, but did not invalidate insurance requirements imposed by the statute and Public Service Commission Rule 1-8-1-.01 as the act did not restrict a state’s authority to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements. *Driskell v. Empire Fire & Marine Ins. Co.*, 249 Ga. App. 56, 547 S.E.2d 360 (2001) (decided under former O.C.G.A. § 46-7-12).

Section designed to protect public. — Former Code 1933, § 68-612 was designed to protect the “public” whose safety may be endangered by the carrier’s operations as distinguished from those having an interstate relationship. It cannot be assumed that the state attempted to enact legislation having an extraterritorial effect by applying to interstate passengers and cargoes. *Rogers v. Atlantic Greyhound Corp.*, 50 F. Supp. 662 (S.D. Ga. 1943) (decided under former O.C.G.A. § 46-7-12).

Provision allowing for direct actions against insurance carriers applied to interstate carriers. — Proper interpretation of the provision in former Code 1933, § 68-612, allowing for direct actions against insurance carriers, was that the statute applied to interstate carriers as well as intrastate carriers. *Kimberly v. Bankers & Shippers Ins. Co.*, 490 F. Supp. 93 (N.D. Ga. 1980) (decided under former Code 1933, § 68-612).

Persons injured by negligence of carrier were entitled to rely upon required protection of Code section. — When people were injured upon the highways of this state by the negligence of a carrier, the individuals were properly entitled to rely upon the protection required by former Code 1933, § 68-612, and this was true whether the particular vehicle was at the time of the accident

engaged in interstate or intrastate commerce. *Acme Freight Lines v. Blackmon*,

131 F.2d 62 (5th Cir. 1942) (decided under former Code 1933, § 68-612).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-612, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Purpose of Code section. — It was the purpose of former Code 1933, § 68-612 to protect the public against injury which may be caused by the negligence of the motor common carrier, the carrier's ser-

vants or agents. 1948-49 Op. Att'y Gen. p. 585 (decided under former Code 1933, § 68-612).

Commission had discretion concerning bond or indemnity insurance. — Former Code 1933, § 68-612 placed a discretion in the commission as to whether or not a bond or a policy of indemnity insurance shall be required of carriers coming under its jurisdiction. 1948-49 Op. Att'y Gen. p. 585 (decided under former Code 1933, § 68-612).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 223 et seq., 286.

ALR. — Validity of municipal ordinance requiring indemnity insurance as condition of operating taxicab, 95 ALR 1224.

Territorial coverage of motor carrier's public liability policy required by statute or ordinance as coextensive with area of authorized operation, 154 ALR 520.

Liability of motor carrier for injuries to passengers from accident occasioned by blowout or other failure of tire, 44 ALR2d 835.

Owning, leasing, or otherwise engaging in business of furnishing services for taxicabs as basis of tort liability for acts of taxi driver under respondeat superior doctrine, 8 ALR3d 818.

40-1-113. Transportation contracts limiting liability.

(a) As used in this Code section, the term:

(1) "Motor carrier transportation contract" means a contract, agreement, or understanding covering:

(A) The transportation of property for compensation or hire by the motor carrier;

(B) Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or

(C) A service incidental to activity described in subparagraph (A) or (B) of this paragraph, including, but not limited to, storage of property.

Motor carrier transportation contract shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

(2) “Promisee” means the person promising to provide transportation of property and any agents, employees, servants, or independent contractors who are directly responsible to such person but shall not include a motor carrier party to a motor carrier transportation contract with such person and such motor carrier’s agents, employees, servants, or independent contractors directly responsible to such motor carrier.

(b) Notwithstanding any provision of law to the contrary, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable. (Code 1981, § 40-1-113, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 46-7-12.1, are included in the annotations for this Code section.

Failure to obtain permit had no impact on status as motor carrier of property. — Motor carrier’s noncompliance with the carrier’s responsibility to obtain a permit had no impact on the carrier’s status as a Georgia “motor carrier of property” under former paragraph (8) of O.C.G.A. § 46-1-1 because while the failure to get a permit rendered the motor carrier in violation of the Act, that failure did not render the motor carrier any less a “motor carrier of property” under applicable law. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former O.C.G.A. § 46-7-12.1).

Policy triggers coverage, not technical filings with state. — Insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the motor carrier’s negligence, notwithstanding the carrier’s failure to file a certificate of insurance as required under the Act; the statute was a clear expression of the legislature’s intent to prevent insurers from insulating themselves from liability under the Motor Car-

rier Act by failing to comply with the Act’s technical requirements, and the insurer’s duty to the public stems from the Act as triggered through the insurance policy rather than from the insurer’s filings with the state. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former O.C.G.A. § 46-7-12.1).

Insurer’s attempt to reduce or negate obligations invalid. — Court of appeals erred in affirming an order granting an insurer’s motion for summary judgment in the insurer’s action seeking a declaration that a car accident involving a driver and a dump truck driver was not covered under the insurance policy the insurer issued to a motor carrier, which was the driver’s employer, because the insurer was subject to a direct action under the former Georgia Motor Carrier Act, former O.C.G.A. § 46-7-12.1(c), by third parties injured by virtue of the motor carrier’s negligence since the motor carrier sought insurance coverage from the insurer, the insurer was on notice of the insurer’s status as a motor carrier and of the insurer’s need to obtain motor carrier coverage, and the motor carrier was not informed of nor otherwise had reason to believe that the policy fell short of the coverage the insurer was required by law to maintain; because any provisions in the

insurance policy issued to the motor carrier that would serve to reduce or negate the insurer's obligations to the motoring public under the Act were void and of no effect, the radius-of-use limitation, which purported to exclude from coverage any

incident occurring more than 50 miles from a city, was invalid, and the insurer was subject to liability up to the policy limit. *Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011) (decided under former O.C.G.A. § 46-7-12.1).

40-1-114. Temporary emergency authority issued to carriers.

Notwithstanding any other provision of law to the contrary, in order to authorize the provision of passenger or household goods service for which there is an immediate and urgent need to a point or points, or within a territory, with respect to which there is no motor carrier service capable of meeting such need, upon receipt of an application for temporary emergency authority and upon payment of the appropriate fee as fixed by statute, the department may, in its discretion and without a hearing or other prior proceeding, grant to any person temporary motor carrier authority for such service. The order granting such authority shall contain the department's findings supporting its determination that there is an unmet immediate and urgent need for such service and shall contain such conditions as the commissioner finds necessary with respect to such authority. Emergency temporary motor carrier authority, unless suspended or revoked for good cause within such period, shall be valid for such time as the department shall specify but not for more than an aggregate of 30 days. Such authority shall in no case be renewed and shall create no presumption that corresponding permanent authority will be granted thereafter, except that, where a motor carrier granted temporary emergency motor carrier authority under the provisions of this Code section makes application during the period of said temporary emergency authority for permanent motor carrier authority corresponding to that authorized in its temporary emergency authority, the temporary emergency motor carrier authority will be extended to the finalization of the permanent authority application unless sooner suspended or revoked for good cause within the extended period. (Code 1981, § 40-1-114, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-611.1 are included in the annotations for this Code section.

Prior application for certificate of public necessity not required. — Applicant for this authority is not required to first make application for certificate of public convenience and necessity. 1973

Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

Commission need not issue certificate of public necessity. — Commission need not issue certificate of public convenience and necessity to applicant for temporary authority. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

Construction with former Code

Section 46-7-3. — Temporary emergency authority granted under former Code 1933, § 68-611.1 (see former O.C.G.A. § 46-7-13) was exception to general requirement of former Code 1933, § 68-604 (see former O.C.G.A. § 46-7-3) that no motor common carrier can operate without first obtaining a certificate. 1973 Op. Att'y Gen. No. 73-85 (decided under former Code 1933, § 68-611.1).

40-1-115. Notice of discontinuance of route.

A motor carrier of passengers may discontinue its entire service on any route upon 30 days' published notice to be prescribed by the department, and thereupon its certificate therefor shall be canceled. A motor carrier of passengers may discontinue any part of its service on any route upon 30 days' published notice, subject, however, to the right of the department to withdraw its certificate for such route if, in the opinion of the commissioner, such diminished service is not adequate or is no longer compatible with the public interest. (Code 1981, § 40-1-115, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-116. Additional taxation prohibited by localities.

No subdivision of this state, including cities, townships, or counties, shall levy any excise, license, or occupation tax of any nature, on the right of a motor carrier to operate equipment, or on the equipment, or on any incidents of the business of a motor carrier. (Code 1981, § 40-1-116, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, Ga. L. 1931, p. 199, § 18, former Code 1933, § 68-623, and former O.C.G.A. §§ 46-7-15 and 46-7-60, are included in the annotations for this Code section.

This Code section not violative of constitutional rights. — Former Code 1933, § 68-623 did not violate Ga. Const. 1976, Art. I, Sec. I, Para. I and Art. I, Sec. II, Para. III (Ga. Const. 1983, Art. I, Sec. I, Para. I; Art. I, Sec. I, Para. II), which declared that protection to person and property was the paramount duty of government and shall be impartial and complete, and no person shall be deprived of life, liberty, or property, except by due process of law. *City of Albany v. Ader*, 176 Ga. 391, 168 S.E. 1 (1933) (decided under former Code 1933, § 68-623); *Mayor of Savannah v. V.C. Ellington Co.*, 177 Ga.

149, 170 S.E. 38 (1933) (decided under former Code 1933, § 68-623).

Former Code 1933, § 68-623 was not unconstitutional on grounds that the statute referred to more than one subject matter or contained matter different from what was expressed in the statute's title. *City of Albany v. Ader*, 176 Ga. 391, 168 S.E. 1 (1933) (decided under former Code 1933, § 68-623); *Mayor of Savannah v. V.C. Ellington Co.*, 177 Ga. 149, 170 S.E. 38 (1933) (decided under former Code 1933, § 68-623); *V.C. Ellington Co. v. City of Macon*, 177 Ga. 541, 170 S.E. 813 (1933) (decided under former Code 1933, § 68-623).

Private and common carriers for hire covered by Code section. — Former Code 1933, § 68-623 applied to both private carriers for hire and common carriers for hire, and a municipal road-use tax on these motor carriers was void.

Mayor of Savannah v. V.C. Ellington Co., 177 Ga. 149, 170 S.E. 38 (1933) (decided under former Code 1933, § 68-623).

Reasonable classification exempts producer from prescribed fee. — Language “So long as the title remains in the producer” limited the operation of the statutory exemption to such an extent that the only property in the class mentioned which was exempted was property where the “title remains in the producer.” This was a reasonable classification in favor of the producer, which will enable movement of the products over the highways so long as title remains in the producer without exaction of the prescribed fee. *Aero Mayflower Transit Co. v. Georgia Pub. Serv. Comm’n*, 179 Ga. 431, 176 S.E. 487 (1934), *aff’d*, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935) (decided under Ga. L. 1931, p. 199, § 18).

Annual license fee not unreasonable or oppressive. — As the annual license fee was for the privilege for a use as extensive as the carrier wills that it shall be, there was nothing unreasonable or oppressive in the burden so imposed. *Aero Mayflower Transit Co. v. Georgia Pub. Serv. Comm’n*, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935) (decided under Ga. L. 1931, p. 199, § 18).

Exemption from municipal taxation covers incidents of carrier business. — Former Code 1933, § 68-623 set up an exemption of a motor common carrier from municipal taxation, not only on the carrier’s equipment and the right to operate the equipment, but also on “any incidents of said motor carrier business.” *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under former Code 1933, § 68-623).

“Incidents” of the business of a motor common carrier did not mean those things without which the business cannot be carried on. Such would be more properly classified as the business itself, rather than an incident thereof. *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under former Code 1933, § 68-623).

Incident of the business of a motor common carrier of freight would be something naturally associated as pertinent to such transportation and necessarily dependent

upon it, but without which the business of transportation might nevertheless be carried on, i.e., the incidental operation would be necessarily dependent upon the transportation, but the business of transportation would not be necessarily dependent upon the incidental operation. *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under Ga. L. 1931, p. 199, § 18).

Operation of service is incident of carrier’s business within statute. — Operation by a motor common carrier, at a municipality lying on the carrier’s route, of a truck to pick up and deliver freight which was to be or had been shipped from or to patrons at such municipality, was an incident of the carrier’s business of transporting freight, within former Code 1933, § 68-623, and by virtue of that section it was exempt from local taxation. *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under former Code 1933, § 68-623).

Operation of motor common carrier in and around municipality not exempt from this Code section. — Operation of a motor common carrier in and immediately around a municipality lying on the carrier’s route of a pick-up and delivery service of freight that had been shipped or was to be shipped to or by patrons at the municipality, was a service, within the classification of an incident of the business of a motor common carrier, and the operation cannot be termed “local draying,” such as was exempted from the operation of Ga. L. 1931, pp. 197 and 207, and to which the exemption from local taxation, under former Code 1933, § 68-602, would not apply. *Acme Freight Lines v. City of Vidalia*, 193 Ga. 334, 18 S.E.2d 540 (1942) (decided under former Code 1933, § 68-602).

City tax ordinance held invalid. — Taxing ordinance of city was invalid because it was in conflict with former Code 1933, § 68-623, it being evident that the General Assembly’s purpose was to reserve to the state the exclusive right to tax common carrier. *City of Albany v. Ader*, 176 Ga. 391, 168 S.E. 1 (1933) (decided under former Code 1933, § 68-623).

City without power to pass tax ordinance contrary to statute. — In view

of the provisions of subsection (d) of former Code 1933, § 68-623, the mayor and council of the City of Atlanta were without power to pass an ordinance imposing an occupational license tax of \$300.00 for the operation of a bus terminal. *Southeastern Greyhound Lines v. City of Atlanta*, 177 Ga. 181, 170 S.E. 43 (1933) (decided under former Code 1933, § 68-623).

Entire municipal ordinance fails where repugnant to statute. — When a municipal corporation attempted to lay a charge indifferently against motor common carriers and motor carriers for hire other than common carriers for the use of the municipality's streets by such carriers, and the portion of the ordinance relating to common carriers was invalid because the ordinance was repugnant to state law, the entire ordinance will necessarily fail, since the objectionable portion as to common carriers was so connected with the general legislative scheme that, if it should be stricken out, effect could not be given to the intention of the mayor and council in adopting the ordinance. *V.C. Ellington Co. v. City of Macon*, 177 Ga. 541, 170 S.E. 813 (1933) (decided under former Code 1933, § 68-623).

Control of state over streets and highways of entire commonwealth is paramount and supreme. — Municipal ordinances which conflict with legislative enactments must yield to the superior authority of the state. Silence on the part of the state, while the state may concede for the time being to municipalities the control and regulation of the streets and highways within the corporate limits of a municipality, was no bar to the exercise of the supreme authority whenever the state sees fit, by legislative enactment, to exer-

cise authority and control. *Mayor of Savannah v. V.C. Ellington Co.*, 177 Ga. 149, 170 S.E. 38 (1933) (decided under Ga. L. 1931, p. 199, § 18).

"Highway" construed. — Word "highways" as used in former Code 1933, § 68-623 included streets. *Southeastern Greyhound Lines v. City of Atlanta*, 177 Ga. 181, 170 S.E. 43 (1933) (decided under Ga. L. 1931, p. 199, § 18).

Fees charged are in nature of tax for use of highways. — Fees charged motor carriers for certificate of public convenience and necessity and for the license of each vehicle are in the nature of a tax, justified in the reasonable amounts exacted, as recompense for the special use of the highways for the purpose of gain. *Southern Motorways, Inc. v. Perry*, 39 F.2d 145 (N.D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

No right of interstate carrier to use highway without paying. — Interstate carrier had no better right than any other to use the state's improved highway without the state's consent, or without paying for the use. *Johnson Transf. & Freight Lines v. Perry*, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Regulation of use of roads by state. — State may license or refuse to license, may condition or charge for, the use of the state's improved roads, when the roads are turned from the roads' common uses and purposes to the carrier's business. *Johnson Transf. & Freight Lines v. Perry*, 47 F.2d 900 (N.D. Ga. 1931) (decided under Ga. L. 1929, p. 293).

Cited in *Dixie Ohio Express Co. v. State Revenue Comm'n*, 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939); *Benton Bros. Drayage & Storage Co. v. Mayor of Savannah*, 219 Ga. 172, 132 S.E.2d 196 (1963).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-518, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Lessor exempt from purchasing tags for vehicles leased to postal service. — Lessors relieved of liability of

purchasing registration tags for vehicles leased to postal service, when said leases are longer than 30 days duration and the postal service has exclusive use of the vehicles during the lease periods; when the lessors regain the use of vehicles on the termination of the leases or before their termination, they will again be responsible for the purchase of registration tags for the vehicles. 1974 Op. Att'y Gen.

No. U74-16 (decided under former Code 1933, § 68-518).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 300, 305, 313. commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

ALR. — State regulation of carriers by motor vehicle as affected by interstate

40-1-117. Registered agents; service; vehicles excluded from motor common or contract carrier.

(a) Each nonresident motor carrier shall, before any certificate or permit is issued to it under this part or at the time of registering as required by Code Section 40-2-140, designate and maintain in this state an agent or agents upon whom may be served all summonses or other lawful processes in any action or proceeding against such motor carrier growing out of its carrier operations; and service of process upon or acceptance or acknowledgment of such service by any such agent shall have the same legal force and validity as if duly served upon such nonresident carrier personally. Such designation shall be in writing, shall give the name and address of such agent or agents, and shall be filed in the office of the state revenue commissioner. Upon failure of any nonresident motor carrier to file such designation with the state revenue commissioner or to maintain such an agent in this state at the address given, such nonresident carrier shall be conclusively deemed to have designated the Secretary of State and his or her successors in office as such agent; and service of process upon or acceptance or acknowledgment of such service by the Secretary of State shall have the same legal force and validity as if duly served upon such nonresident carrier personally, provided that notice of such service and a copy of the process are immediately sent by registered or certified mail or statutory overnight delivery, return receipt requested, by the Secretary of State or his or her successor in office to such nonresident carrier, if its address be known. Service of such process upon the Secretary of State shall be made by delivering to his or her office two copies of such process with a fee of \$10.00.

(b) Except in those cases where the Constitution requires otherwise, any action against any resident or nonresident motor carrier for damages by reason of any breach of duty, whether contractual or otherwise, or for any violation of this article or of any order, decision, rule, regulation, direction, demand, or other requirement established by the state revenue commissioner may be brought in the county where the cause of action or some part thereof arose; and if the motor carrier or its agent shall not be found for service in the county where the action is instituted, a second original may be issued and service be made in

any other county where the service can be made upon the motor carrier or its agent. The venue prescribed by this Code section shall be cumulative of any other venue provided by law.

(c) Except in those cases where the Constitution requires otherwise, for the purposes of venue only, any truck engaged exclusively in the transportation of agricultural or dairy products, or both, between farm, market, gin, warehouse, or mill shall not be classified as a motor common or contract carrier.

(d)(1) As used in this subsection, the term “covered farm vehicle” means a motor vehicle with a gross vehicle weight rating or gross vehicle weight, whichever is greater, of 26,000 pounds or less; or a motor vehicle with a gross vehicle weight rating or gross vehicle weight that is greater than 26,000 pounds and which is traveling within the registered state or within 150 miles of the farm or ranch for which it is used. To qualify as a covered farm vehicle either type of motor vehicle listed in this paragraph must also be:

(A) Registered in this or another state;

(B) Operated by a farmer, rancher, or tenant under a crop share farm lease agreement or a family member or employee of a farmer, rancher, or crop share tenant;

(C) Used primarily for the transportation of farm supplies, crops, livestock, or farm machinery; and

(D) Not used in a for hire motor carrier operation; provided, however, that this requirement shall not apply to a motor vehicle operated under a tenant crop share agreement used primarily for transporting crops of the landlord.

(2) A covered farm vehicle is not a motor carrier; provided, however, that any motor vehicle required by federal law to be designated as either a covered farm vehicle or a motor carrier shall be so designated as required by federal law.

(3) A covered farm vehicle must be equipped with either a license plate or possess such other special designation issued by the state where such vehicle is registered and the license plate or special designation must indicate that such vehicle is a covered farm vehicle. (Code 1981, § 40-1-117, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, §§ 11, 12/HB 323.)

The 2013 amendment, effective July 1, 2013, in subsection (a), inserted “certificate or” near the beginning of the first sentence, and inserted “, return receipt requested,” near the end of the third sentence; substituted “may be issued” for

“may issue” near the end of the first sentence of subsection (b); and, effective January 1, 2014, added subsection (d). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General

Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after

such date; provided, however, that Section 12 of this Act shall not be effective until January 1, 2014."

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-618 and former O.C.G.A. §§ 46-7-17 and 46-7-62 are included in the annotations for this Code section.

Strict construction of this Code section. — Former Code 1933, § 68-618, being in derogation of the common law, will not be extended beyond the mode fixed by the legislature and shall be strictly and literally construed. *Norris Candy Co. v. Dixie Hwy. Express, Inc.*, 102 Ga. App. 665, 117 S.E.2d 250 (1960) (decided under former Code 1933, § 68-618).

The provisions of former Code 1933, § 68-618 as to service on nonresident motor carriers were in derogation of common law and were to be strictly construed. *Record Truck Line v. Harrison*, 109 Ga. App. 653, 137 S.E.2d 65, *aff'd*, 220 Ga. 289, 138 S.E.2d 578 (1964) (decided under former Code 1933, § 68-618).

Former Code 1933, § 68-618, being in derogation of common-law and granting extraterritorial jurisdiction, must be strictly construed. *Taylor v. Jones*, 123 Ga. App. 476, 181 S.E.2d 506 (1971) (decided under former Code 1933, § 68-618).

Code section was not mandatory. — Former Code 1933, § 68-618 was not to be construed as mandatory as respected the venue of a tort action against a motor common carrier being in the county in which the cause of action originated. *De Loach v. Southeastern Greyhound Lines*, 49 Ga. App. 662, 176 S.E. 518 (1934) (decided under former Code 1933, § 68-618).

Applicability of subsection (a). — Provisions of subsection (a) of former Code 1933, § 68-618 were applicable only to those situations in which the cause of action arose out of the carrier's operations in this state. *Record Truck Line v. Harrison*, 110 Ga. App. 520, 139 S.E.2d 153 (1964) (decided under former Code 1933, § 68-618); *Mathews v. Rail Express, Inc.*, 836 F. Supp. 873 (N.D. Ga. 1993) (decided under former O.C.G.A. § 46-7-17).

Venue of personal injury action. — Even though a nonresident interstate motor common carrier was registered in Georgia and had a registered agent for service of process, venue of a personal injury action against the carrier and nonresident driver was proper only in the county in which the accident occurred, not where the carrier's registered office was maintained. *Southern Drayage, Inc. v. Williams*, 216 Ga. App. 721, 455 S.E.2d 418 (1995) (decided under former O.C.G.A. § 46-7-17).

Payment of money determines applicability of subsection (a). — In determining whether an entity is a "motor contract or common carrier" such that the substituted service provisions of subsection (a) of former O.C.G.A. § 46-7-17 and § 46-7-62(a) applied, the inquiry must focus on the payment of money for the transportation of the goods or people. *Ellerbe v. Interstate Contract Carrier Corp.*, 183 Ga. App. 828, 360 S.E.2d 280 (1987) (decided under former O.C.G.A. § 46-7-17).

Language refers to carrier operations upon highways of this state. — When the words "motor common carrier" were used in subsection (a) of former Code 1933, § 68-618, the words referred to motor common carriers using the public highways of this state; and in providing that such nonresident motor common carrier shall designate an agent for service in this state upon whom service may be perfected "in any action or proceeding against such motor common carrier growing out of its carrier operations," it necessarily referred to carrier operations upon the highways of this state. *Record Truck Line v. Harrison*, 220 Ga. 289, 138 S.E.2d 578 (1964) (decided under former Code 1933, § 68-618).

Out-of-state accident. — Georgia court had no personal jurisdiction over a trucking company licensed in Georgia as a nonresident motor common carrier, where it was undisputed that the traffic accident

involving the trucking company occurred outside the State of Georgia. *Tuck v. Cummins Trucking Co.*, 171 Ga. App. 485, 320 S.E.2d 265 (1984) (decided under former O.C.G.A. § 46-7-62). *Mathews v. Rail Express, Inc.*, 836 F. Supp. 873 (N.D. Ga. 1993) (decided under former O.C.G.A. § 46-7-62).

Burden of proving vehicle exempt from definition of "motor contract carrier." — On the question of whether a carrier was a "motor contract carrier" subject to suit in the county of the accident pursuant to subsection (b) of former § 46-7-62 the burden of proof was on the truck owner to show that its truck came within the exemption from the definition of "motor contract carrier" found in former § 46-1-1(8)(c) and there was no burden on plaintiffs to prove that the truck was not within the exemption. *Georgia Cas. & Sur. Co. v. Jernigan*, 166 Ga. App. 872, 305 S.E.2d 611 (1983) (decided under former O.C.G.A. § 46-7-62).

Venue provision is permissive and cumulative. — Former Code 1933, § 68-618 did not make mandatory the bringing of such action against a motor common carrier in the county where the cause of action originated, but was purely permissive and cumulative. *Harrison v. Neel Gap Bus Line*, 51 Ga. App. 120, 179 S.E. 871 (1935) (decided under former Code 1933, § 68-618).

Venue provision inapplicable to vehicles of state or political subdivision. — In action against county hospital authority and ambulance driver by automobile accident victim, the hospital authority was exempt from the venue provision of former O.C.G.A. § 46-7-17 under the exemption provided for vehicles operated by any state or subdivision thereof in former § 46-1-1(7)(C)(viii). *Calhoun County Hosp. Auth. v. Walker*, 205 Ga. App. 259, 421 S.E.2d 777 (1992), cert. denied, 205 Ga. App. 899, 421 S.E.2d 777 (1992) (decided under former O.C.G.A. § 46-7-17).

Not all venue options applicable to nonresident carrier. — Last sentence of subsection (b) of former O.C.G.A. § 46-7-17 did not mean that any and all venue provisions relative to an action against an insurer were applicable, at the

election of the plaintiff, in a tort action against a motor carrier. What the sentence did mean was that the statute's venue provisions were not exclusive with regard to a suit against a motor carrier and that venue can be predicated upon any statute which was otherwise applicable. *Thomas v. Bobby Stevens Hauling Contractors*, 165 Ga. App. 710, 302 S.E.2d 585 (1983) (decided under former O.C.G.A. § 46-7-17).

Venue in action arising out of transaction in this state against nonresident carrier. — It was provided that an action against a nonresident motor common carrier may be brought in the county where the cause of action or some part thereof arose, this did not have the effect of restricting or limiting the venue in that respect; this provision contemplated an action arising out of a transaction in this state, but even then it did not require that the action be brought in the county where it arose. *Parker v. Ryder Truck Lines*, 150 Ga. App. 163, 257 S.E.2d 18 (1979) (decided under former Code 1933, § 68-618).

Venue proper in county of registered office. — In an action against a trucking company, venue was proper in the county in which the company had the company's office properly registered with the secretary of state, not in the county of residence of the company's designated registered agent for service of process. *Rock v. Ready Trucking, Inc.*, 218 Ga. App. 774, 463 S.E.2d 355 (1995) (decided under former O.C.G.A. § 46-7-17).

Residence of foreign carrier where cause of action originated. — Foreign motor common carrier, engaged in the business of trucking, hauling, and transporting freight over the various public highways within the state, and having designated a resident agent upon whom service of process can be made, under the clear mandate of former Code 1933, § 68-618, was, so far as the right to sue was concerned, a resident of this state, and a resident of the county in which the cause of action originated, so far as the right to bring an action against the county for a cause of action originating in that county was concerned. *Southeastern Truck Lines v. Rann*, 214 Ga. 813, 108 S.E.2d 561 (1959) (decided under former Code 1933, § 68-618).

Alternative venue for actions against carriers. — Under former Code 1933, § 68-618, a motor carrier “may be” sued in the county where the cause of action originated or may be sued in the county where the carrier maintained the carrier’s principal office and place of business, and this was so, regardless of whether the motor carrier had an agent in the jurisdiction wherein the cause of action originated. *Modern Coach Corp. v. Faver*, 87 Ga. App. 221, 73 S.E.2d 497 (1952).

Permissible venue in county where cause of action originated despite residence of defendants. — Motor common carrier may be a nonresident corporation, yet since the carrier is engaged in doing business in this state, and has agents in the state for that purpose, the carrier is a resident of this state and a resident of the county in which the cause of action originated, so far as the right to bring an action against the county for a cause of action originating in that county is concerned, and, being a resident of that county for the purpose of an action, a joint tortfeasor, notwithstanding that the joint tortfeasor may reside in another county of this state, may be sued jointly with the motor common carrier in the county in which the cause of action originated. *A.G. Boone Co. v. Owens*, 51 Ga. App. 739, 181 S.E. 519 (1935) (decided under former Code 1933, § 68-618).

A joint cause of action against a motor common carrier, which is a domestic corporation, against the carrier’s servant and employee, and against the insurance carrier of the motor common carrier, a non-resident corporation with an agent for service in this state, for damages alleged to have been sustained by the negligent operation of the motor vehicle of the motor common carrier, may be brought in the county wherein the cause of action originated, although none of the defendants were residents of such county or have agents therein. *Atlanta-Asheville Motor Express v. Dooley*, 78 Ga. App. 265, 50 S.E.2d 822 (1948) (decided under former Code 1933, § 68-618).

Lack of agent in county where action originated does not preclude venue therein. — Action against a motor

common carrier, except when the Constitution of this state otherwise provides, may be brought and maintained in any county in this state in which the cause of action originated, for damages for an injury to person or property by the operation of the vehicles of such motor common carrier, although the carrier may not have an agent in that county upon whom service of the suit may be perfected. *A.G. Boone Co. v. Owens*, 51 Ga. App. 739, 181 S.E. 519 (1935) (decided under former Code 1933, § 68-618).

Same venue principles applicable to carriers as to railroad companies. — Under former Code 1933, § 94-1101, a joint and several action can be brought against a railroad company and another tortfeasor, and as against the railroad company and the company’s employee, a conductor or engineer, and the suit can be brought in the county where the cause of action originated and service perfected by second original, and this was true even though neither defendant resided or had an agent in that county; the same principle was applicable to a suit against a motor common carrier and the driver of the carrier’s motor vehicle for a tort. *Atlanta-Asheville Motor Express v. Dooley*, 78 Ga. App. 265, 50 S.E.2d 822 (1948) (decided under former Code 1933, § 68-618).

Venue as to nonresidents. — Venue of action against nonresidents may be maintained under Ga. L. 1959, p. 120, § 1 (see O.C.G.A. § 40-12-3) as well as former Code 1933, § 68-618. *Parker v. Ryder Truck Lines*, 150 Ga. App. 163, 257 S.E.2d 18 (1979) (decided under former Code 1933, § 68-618).

Conferring of qualified residence upon nonresident motor carrier. — Former Code 1933, § 68-514 controlled qualified residence upon nonresident motor contract carrier for purposes of action such that a resident joint tortfeasor may be joined in an action against it in the county where the injury occurred although the joint tortfeasor was a nonresident of such county, and although the defendant corporation had no office or place of doing business therein. *Pate v. Brock*, 95 Ga. App. 594, 98 S.E.2d 404 (1957) (decided under former Code 1933, § 68-514).

No misjoinder where proper action brought against parties. — It being alleged that the driver of the motor vehicle was engaged in carrying out the duties of the driver's employment as a driver for a common carrier at the time of the accident, and it appearing that the casualty company was the insurance carrier of the motor carrier, the action was properly brought against the three named defendants, and there was no misjoinder. *Atlanta-Asheville Motor Express v. Dooley*, 78 Ga. App. 265, 50 S.E.2d 822 (1948) (decided under former Code 1933, § 68-514).

Cited in *Lee v. Acme Freight Lines*, 54

F. Supp. 397 (S.D. Ga. 1944); *United Motor Freight Term. Co. v. Driver*, 74 Ga. App. 244, 39 S.E.2d 496 (1946); *American Fid. & Cas. Co. v. Farmer*, 77 Ga. App. 166, 48 S.E.2d 122 (1948); *Dependable Ins. Co. v. Gibbs*, 218 Ga. 305, 127 S.E.2d 454 (1962); *Delcher Bros. Storage Co. v. Ward*, 134 Ga. App. 686, 215 S.E.2d 516 (1975); *Dove v. National Freight, Inc.*, 138 Ga. App. 114, 225 S.E.2d 477 (1976); *Irving Com. Corp. v. Sound Floor Coverings, Inc.*, 595 F. Supp. 536 (N.D. Ga. 1984); *Gault v. National Union Fire Ins. Co.*, 208 Ga. App. 134, 430 S.E.2d 63 (1993); *Cooper v. Edwards*, 235 Ga. App. 48, 508 S.E.2d 708 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, § 287. 14 Am. Jur. 2d, Carriers, §§ 595, 1130.

C.J.S. — 61 C.J.S., Motor Vehicles, §§ 1127 et seq., 1158, 1159.

ALR. — State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

Constitutionality of statutes which permit action against trucking or bus company for injury to person or property to be brought in any county through or into which the route passes, and providing for the service of process in such cases, 81 ALR 777.

40-1-118. Establishment of just and reasonable rates, fares, and charges for transportation.

The commissioner shall prescribe just and reasonable rates, fares, and charges for transportation by motor carriers of household goods and for all services rendered by motor carriers in connection therewith. The tariffs therefor shall be in such form and shall be filed and published in such manner and on such notice as the department may prescribe. Such tariffs shall also be subject to change on such notice and in such manner as the department may prescribe. In order to carry out the purposes of this Code section, including the publication and maintenance of just, reasonable, and nondiscriminatory rates and charges, the department shall establish a rate-making procedure for all carriers of household goods. Failure on the part of any motor carrier to comply with this Code section or the rules and regulations promulgated under this Code section may result in suspension or cancellation of said carrier's operating authority by the department. (Code 1981, § 40-1-118, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-614 and former O.C.G.A. §§ 46-7-18 and 46-7-19 are included in the annotations for this Code section.

Collective ratemaking activities by "rate bureaus" immune from antitrust liability. — Collective ratemaking activities carried on by "rate bureaus" composed of motor common carriers operating in several states, although not compelled by the states involved, "clearly ar-

ticated state policy" and thus were immune from antitrust liability. *Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U.S. 48, 105 S. Ct. 1721, 85 L. Ed. 2d 36 (1985) (decided under former O.C.G.A. § 46-7-18).

Cited in *Myers v. Atlantic Greyhound Lines*, 52 Ga. App. 698, 184 S.E. 414 (1936); *United States v. Southern Motor Carriers Rate Conference*, 439 F. Supp. 29 (N.D. Ga. 1977); *Executive Town & Country Servs., Inc. v. City of Atlanta*, 789 F.2d 1523 (11th Cir. 1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 157, 158.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 214 et seq., 223 et seq.

40-1-119. Charges by motor carriers; unjust discrimination by carriers prohibited.

No motor carrier of household goods or passengers shall charge, demand, collect, or receive a greater or lesser or different compensation for the transportation of household goods or passengers or for any service rendered in connection therewith than the rates, fares, and charges prescribed or approved by order of the department; nor shall any such motor carrier unjustly discriminate against any person in its rates, fares, or charges for service. The commissioner may prescribe, by general order, to what persons motor carriers of passengers may issue passes or free transportation; may prescribe reduced rates for special occasions; and may fix and prescribe rates and schedules. (Code 1981, § 40-1-119, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 13/HB 323.)

The 2013 amendment, effective July 1, 2013, in the first sentence, substituted "passengers" for "property" near the beginning, and substituted "household goods or passengers" for "property" near the middle; and substituted "passengers" for "household goods" in the middle of the second sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

40-1-120. Limiting baggage size for motor carrier's passengers.

Motor carriers of passengers shall not be compelled to carry baggage of passengers, except hand baggage, the character, amount, and size of

which the motor carrier may limit by its rules and regulations, subject to the approval of the department; and the department may by rule or regulation limit the amount of the liability of the motor carrier therefor. If a motor carrier shall elect to carry the personal baggage of passengers, other than hand baggage, the department shall prescribe just and reasonable rates therefor and such other rules and regulations with respect thereto as may be reasonable and just, and may by rule or regulation limit the amount of the liability of the motor carrier therefor. (Code 1981, § 40-1-120, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-617 are included in the annotations for this Code section.

Ignorance of commission rules no excuse. — Rules of the commission made

pursuant to former Code 1933, § 68-617 were presumed to be known or ascertainable by the public, and ignorance thereof excused no one. *Myers v. Atlantic Greyhound Lines*, 52 Ga. App. 698, 184 S.E. 414 (1936) (decided under former Code 1933, § 68-617).

RESEARCH REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d, Carriers, §§ 1181, 1232, 1248 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 291.

40-1-121. Inspection of books and records.

The department shall prescribe the books and the forms of accounts to be kept by the holders of certificates under this part, which books and accounts shall be preserved for such reasonable time as may be prescribed by the department. The books and records of every certificate holder shall be at all times open to the inspection of any agent of the department for such purpose. The department shall have the power to examine the books and records of all motor carriers to whom it has granted certificates or permits to operate under this part and to examine under oath the officers and agents of any motor carrier with respect thereto. (Code 1981, § 40-1-121, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 31, 43, 91, 112, 113.

C.J.S. — 60 C.J.S., Motor Vehicles, § 125 et seq.

ALR. — State regulation of carriers by

motor vehicle as affected by interstate commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

40-1-122. Observing laws; schedule of operation.

Motor carriers shall observe the laws of this state in respect to size, weight, and speed of their vehicles. Intrastate motor carriers of passengers shall, and interstate motor carriers of passengers may, file with the department the schedules upon which they propose to operate their vehicles, which schedules shall be such that the net running time of vehicles between terminal points shall not exceed the lawful speed limit; and any motor carrier of passengers filing such a schedule shall be allowed to operate his or her vehicles on the highway at a rate of speed not exceeding the lawful speed limit in order to maintain a schedule so filed. (Code 1981, § 40-1-122, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-634 are included in the annotations for this Code section.

Cited in *Folds v. Auto Mut. Indem. Co.*, 55 Ga. App. 198, 189 S.E. 711 (1937); *Atlantic Greyhound Corp. v. Loudermilk*, 110 F.2d 596 (5th Cir. 1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 263, 265, 267, 284.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 28 et seq., 47, 48, 111 et seq., 153, 154, 155, 162, 166.

ALR. — State regulation of carriers by motor vehicle as affected by interstate

commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

Construction and application of statute or ordinance designed to prevent use of vehicles or equipment thereof injurious to the highway, 134 ALR 550.

40-1-123. Enjoining operation of motor carriers.

Any motor carrier which operates on the public highways of this state without the required certificate or permit, or after such certificate or permit has been canceled, or without having registered its vehicle or vehicles as provided for in this part, or which operates otherwise than is permitted by the terms of such certificate or permit or the laws of this state may be enjoined from operating on the public highways of this state upon the bringing of a civil action by the department, by a competing motor carrier or rail carrier, or by any individual. (Code 1981, § 40-1-123, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-124. Perpetual franchise over public highways prohibited.

Nothing in this part or any other law shall be construed to vest in the owner, holder, or assignee of any certificate or permit issued under this part any vested right to use the public highways of this state and shall

not be construed to give to any motor carrier any perpetual franchise over such public highways. (Code 1981, § 40-1-124, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-631 are included in the annotations for this Code section.

No certificate holder acquires vested right or perpetual franchise. — No holder of a certificate of public convenience and necessity issued by the commission shall acquire any vested right to use the public roads or any perpetual franchises. *Bass v. Georgia Public-Service Comm'n*, 192 Ga. 106, 14 S.E.2d 740 (1941) (decided under former Code 1933, § 68-631).

No right to review of commission order by writ of certiorari. — After a certificate of public convenience and necessity had been granted by the commission to a motor common carrier, and there-

after, by order of the commission, and after a hearing such certificate was revoked and canceled because the evidence adduced at such hearing showed that such motor common carrier had abandoned the passenger service along the route in question, the motor common carrier, whose certificate of public convenience had thus been revoked and canceled by the commission did not have the right to review such judgment or order of the commission by the writ of certiorari in the superior court having jurisdiction. *Southeastern Greyhound Lines v. Georgia Pub. Serv. Comm'n*, 181 Ga. 75, 181 S.E. 834 (1935) (decided under former Code 1933, § 68-631).

Cited in *Coleman v. Drake*, 183 Ga. 682, 188 S.E. 897 (1936).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d., Carriers, §§ 125 et seq., 148, 149, 151.

40-1-125. Hearing upon suspension or revocation of motor carrier certificate; judicial review.

(a) Upon issuance by the commissioner of an order suspending or revoking a motor carrier certificate, such motor carrier shall be afforded a hearing to be held in accordance with the procedures set forth in Code Section 40-1-56.

(b) Any person whose motor carrier certificate has been suspended or revoked and who has exhausted all administrative remedies available within the Department of Public Safety is entitled to judicial review in accordance with Code Section 40-1-56. (Code 1981, § 40-1-125, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-126. Carriers engaged in interstate and intrastate commerce.

In circumstances where a motor carrier is engaged in both interstate and intrastate commerce, it shall nevertheless be subject to all the

provisions of this part so far as it separately relates to commerce carried on exclusively in this state. It is not intended that the department shall have the power of regulating the interstate commerce of such motor carrier, except to the extent expressly authorized by this part as to such commerce. The provisions of this part do not apply to purely interstate commerce nor to carriers exclusively engaged in interstate commerce. When a motor carrier is engaged in both intrastate and interstate commerce, it shall be subject to all the provisions of this part so far as they separately relate to commerce carried on in this state. (Code 1981, § 40-1-126, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-633 and former O.C.G.A. § 46-7-36 are included in the annotations for this Code section.

Direct action against insurers of interstate carriers allowed. — Proper interpretation of the provision in former Code 1933, § 68-612 allowing for direct actions against insurance carriers, in conjunction with former Code 1933, § 68-633, was that the statute applied to interstate carriers as well as intrastate carriers. *Kimberly v. Bankers & Shippers Ins. Co.*, 490 F. Supp. 93 (N.D. Ga. 1980) (decided under former Code 1933, § 68-633).

Cause of action for tort occurring out-of-state. — Since, under former O.C.G.A. § 46-7-16(e), a certificate and bond or insurance was not required at all when carrier was engaged solely in interstate commerce over the public highways of Georgia, the certificate of convenience which permitted joinder of the insurer in a suit against a carrier "subject to action" in Georgia applied specifically to causes of action for a tort which occurred on public highways of other states. *Johnson v. Woodard*, 208 Ga. App. 41, 429 S.E.2d 701 (1993) (decided under former O.C.G.A. § 46-7-36).

Cited in *Record Truck Line v. Harrison*, 220 Ga. 289, 138 S.E.2d 578 (1964).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, § 36 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 201 et seq., 206 et seq., 201 et seq., 226.

ALR. — State regulation of carriers by motor vehicle as affected by interstate commerce clause, 47 ALR 230; 49 ALR 1203; 62 ALR 52; 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

40-1-127. Actions for recovery of overcharges; rates, charges, and claims for loss or damage.

(a) All actions at law against motor carriers operating in this state, which actions seek to recover overcharges accruing on intrastate shipments, shall be initiated within a period of three years after the time the cause of action accrues, and not thereafter, provided that, if a claim for the overcharge is presented in writing to the carrier within the three-year period of limitation, the period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim or any part thereof.

(b) A motor carrier of property may, upon notice to the commissioner of public safety, elect to be subject to the following requirements regarding rates, charges, and claims for loss or damage:

(1) A motor carrier of property shall provide to the shipper, upon request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate agreed to between the shipper and carrier may have been based. When the applicability or reasonableness of the rates and related provisions billed by a carrier is challenged by the person paying the freight charges, the commissioner of public safety shall determine whether such rates and provisions are reasonable or applicable based on the record before it. In cases where a carrier other than a carrier providing transportation of household goods seeks to collect charges in addition to those billed and collected which are contested by the payor, the carrier may request that the commissioner of public safety determine whether any additional charges over those billed and collected must be paid. A carrier must issue any bill for charges in addition to those originally billed within 180 days of the original bill in order to have the right to collect such charges;

(2) If a shipper seeks to contest the charges originally billed by a motor carrier of property, the shipper may request that the commissioner of public safety determine whether the charges originally billed must be paid. A shipper must contest the original bill within 180 days in order to have the right to contest such charges; and

(3) Claims for loss of or damage to property for which any motor carrier of property may be liable must be filed within nine months after the delivery of the property, except that claims for failure to make delivery must be filed within nine months after a reasonable time for delivery has elapsed.

(c) The commissioner of public safety shall adopt rules regarding rates, charges, and claims for loss or damage applicable to carriers of household goods. (Code 1981, § 40-1-127, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-128. Accepting or receiving rebates or drawbacks; prima-facie evidence of intentional violation; burden of claiming exception.

(a) Any officer, agent, or employee of any corporation, and any other person, who knowingly accepts or receives any rebate or drawback from the rates, fares, or charges established or approved by the department for motor carriers of passengers or household goods, or who procures, aids, or abets therein, or who uses or accepts from such motor carrier any free pass or free transportation not authorized or permitted by law

or by the orders, rules, or regulations of the department, or who procures, aids, or abets therein, shall be guilty of a misdemeanor.

(b) The possession of goods, wares, or merchandise loaded on a motor vehicle consigned to any person, firm, or corporation, being transported or having been transported over the public highways in this state, without the authority of a permit or certificate for so transporting having been issued by the department under this article, shall be prima-facie evidence that such transportation of such goods, wares, or merchandise was an intentional violation of the law regulating the transportation of persons and property over the public highways in this state.

(c) Any person claiming the benefit of any exception made in this article shall have the burden of proving that he or she falls within the exception. (Code 1981, § 40-1-128, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

Cross references. — Prohibition against rebates, Ga. Const. 1983, Art. III, Sec. VI, Para. V.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former O.C.G.A. § 46-7-38 are included in the annotations for this Code section.

Intent of Code sections prescribing penalties for violations of laws concerning motor common and contract carriers. — Former O.C.G.A. § 46-7-38 and O.C.G.A. §§ 32-1-10, 32-6-23 and 32-6-24 were intended to promote the

safety of the traveling public and protect the public's investment in public roads and highways. 1981 Op. Att'y Gen. No. U81-17 (decided under former O.C.G.A. § 46-7-38).

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-128 are offenses for which those charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 285, 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

C.J.S. — 13 C.J.S., Carriers, §§ 333, 335, 336, 346, 355. 61A C.J.S., Motor Vehicles, § 1504 et seq.

40-1-129. Fines for violating certificate requirement; advertising services without certificate.

(a) Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person, firm, or corporation is operating as a household goods carrier for hire without a valid certificate issued by the department or is holding itself out as such a carrier without such a certificate in violation of this part, the department may impose a fine of not more than \$5,000.00 for

each violation. The department may assess the person, firm, or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the department. The department may also assess interest at the rate specified in Code Section 40-1-56 on any fine or assessment imposed, to commence on the day the fine or assessment becomes delinquent. All fines, assessments, and interest collected by the department shall be paid into the general fund of the state treasury. Any party aggrieved by a decision of the department under this subsection may seek judicial review as provided in Code Section 40-1-56.

(b) Any person, firm, or corporation who knowingly and willfully issues, publishes, or affixes or causes or permits the issuance, publishing, or affixing of any oral or written advertisement, broadcast, or other holding out to the public, or any portion thereof, that the person, firm, or corporation is in operation as a household goods carrier for hire without having a valid certificate issued by the department is guilty of a misdemeanor. Any fine or assessment imposed by the department pursuant to the provisions of subsection (a) of this Code section shall not bar criminal prosecution pursuant to the provisions of this subsection. (Code 1981, § 40-1-129, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised lan-

guage in the last sentence of subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 40-1-129 are offenses for which those

charged are not to be fingerprinted. 2012 Op. Att'y Gen. No. 12-6.

40-1-130. Inclusion of motor carrier authorization number in advertising.

In any advertisement for a motor carrier, whether by print, radio, television, other broadcast, or electronic media including but not limited to Internet advertising and any listing or sites on any website, the motor carrier shall include the motor carrier authorization number issued to it by the Department of Public Safety. The requirements of this Code section shall not apply to nonconsensual towing motor carriers providing services pursuant to Code Section 44-1-13. The department shall be required to issue a motor carrier authorization number to each registered motor carrier. Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person is advertising in violation of this Code section, the department may impose a fine of not more than

\$500.00 for an initial violation and not more than \$15,000.00 for a second or subsequent violation. (Code 1981, § 40-1-130, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

PART 3

GEORGIA LIMOUSINE CARRIERS

40-1-150. Short title.

This part shall be known and may be cited as the “Georgia Limousine Carrier Act.” (Code 1981, § 40-1-150, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-151. Definitions.

As used in this part, the term:

(1) “Certificate” or “limousine carrier certificate” means a certificate issued by the department for the operation of limousines or limousine services under this part and such certificates issued by the Public Service Commission on or before June 30, 2012.

(2) “Chauffeur” means any person with a Georgia state driver’s license who meets the qualifications as prescribed in this part and who is authorized by the commissioner of driver services to drive a motor vehicle of a limousine carrier as provided in paragraph (5) of this Code section.

(3) “Department” means the Department of Public Safety.

(4) “Limousine” means any motor vehicle that meets the manufacturer’s specifications for a luxury limousine with a designed seating capacity for no more than ten passengers and with a minimum of five seats located behind the operator of the vehicle, and which does not have a door at the rear of the vehicle designed to allow passenger entry or exit; further, no vehicle shall be permitted to be operated both as a taxicab and a limousine.

(5) “Limousine carrier” means any person owning or operating a prearranged service regularly rendered to the public by furnishing transportation as a motor carrier for hire, not over fixed routes, by means of one or more unmetered:

- (A) Limousines;
- (B) Extended limousines;
- (C) Sedans;
- (D) Extended sedans;

(E) Sport utility vehicles;

(F) Extended sport utility vehicles;

(G) Other vehicles with a capacity for seating and transporting no more than 15 persons for hire including the driver; or

(H) Any combination of subparagraphs (A) through (G) of this paragraph on the basis of telephone contract or written contract. A limousine carrier shall not use per capita rates or charges.

(6) "Person" means any individual, firm, partnership, private or public corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

(7) "Public highway" means every public street, road, highway, or thoroughfare of any kind in this state.

(8) "Vehicle" or "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined by the commissioner. (Code 1981, § 40-1-151, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 14/HB 323.)

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "paragraph (5) of this Code section" for "paragraph (5) below" at the end of paragraph (2). The second 2013 amendment, effective July 1, 2013, substituted "commissioner" for

"commission" at the end of paragraph (8). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

40-1-152. Operation in accordance with provisions; certificate for limousine carrier required.

(a) No limousine carrier shall operate any motor vehicle owned or operated by a limousine carrier for the transportation of passengers for compensation on any public highway in this state except in accordance with the provisions of this article.

(b) No person may engage in the business of a limousine carrier over any public highway in this state without first having obtained from the department a certificate to do so. (Code 1981, § 40-1-152, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-153. Application form for limousine carriers; issuance to qualified applicants.

(a) The department shall prescribe the form of the application for a limousine carrier certificate and shall prescribe such reasonable requirements as to notice, publication, proof of service, maintenance of adequate liability insurance coverage, and information as may, in its judgment, be necessary and may establish fees as part of such certificate process.

(b) A limousine carrier certificate shall be issued to any qualified applicant, provided that such applicant is a limousine carrier business domiciled in this state, authorizing the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and conform to the provisions of this part and the rules and regulations of the department and has not been convicted of any felony as such violation or violations are related to the operation of a motor vehicle. (Code 1981, § 40-1-153, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-154. Regulation of carriers on safety of equipment; annual inspections.

(a) It shall be the duty of the department to regulate limousine carriers with respect to the safety of equipment.

(b) The department shall require safety and mechanical inspections at least on an annual basis for each vehicle owned or operated by a limousine carrier. The department shall provide, by rule or regulation, for the scope of such inspections, the qualifications of persons who may conduct such inspections, and the manner by which the results of such inspections shall be reported to the department.

(c) In addition to the requirements of this Code section, limousine carriers shall comply with the applicable provisions of Code Section 40-1-8. (Code 1981, § 40-1-154, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-155. Transferring or encumbering certificates.

No limousine carrier certificate issued under this part may be leased, assigned, or otherwise transferred or encumbered unless authorized by the department. (Code 1981, § 40-1-155, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-156. Grounds for cancellation, revocation, or suspension of limousine carrier certificate.

(a) The department may cancel, revoke, or suspend any limousine carrier certificate issued under this part on any of the following grounds:

- (1) The violation of any of the provisions of this part;
- (2) The violation of an order, decision, rule, regulation, or requirement established by the department;
- (3) Failure of a limousine carrier to pay a fee imposed on the carrier within the time required by law or by the department;
- (4) Failure of a limousine carrier to maintain required insurance in full force and effect; and
- (5) Failure of a limousine carrier to operate and perform reasonable services.

(b) After the cancellation or revocation of a certificate or during the period of its suspension, it is unlawful for a limousine carrier to conduct any operations as such a carrier. (Code 1981, § 40-1-156, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-157. Validity of certificates.

Limousine certificates shall be valid unless suspended, revoked, or canceled by the commissioner, or surrendered to the commissioner by the holder. (Code 1981, § 40-1-157, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in the middle of this Code section.

40-1-158. Limousine chauffeur authorization and license endorsement.

Pursuant to rules and regulations prescribed by the commissioner of driver services, each chauffeur employed by a limousine carrier shall secure from the Department of Driver Services a limousine chauffeur authorization and license endorsement. (Code 1981, § 40-1-158, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-159. Fees upon initial application.

The commissioner shall collect the following one-time fees upon initial application of a limousine carrier pursuant to this part:

(1) A fee of \$75.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates fewer than six limousines;

(2) A fee of \$150.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates six to 15 limousines;

(3) A fee of \$200.00 to accompany each application for a certificate, or amendment to an existing certificate, where the applicant owns or operates more than 15 limousines; and

(4) A fee of \$75.00 to accompany each application for transfer of a certificate. (Code 1981, § 40-1-159, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1929, p. 293, are included in the annotations for this Code section.

Fees charged are in nature of tax. — Fees charged motor carriers for certificate of public convenience and necessity and

for the license of each vehicle are in the nature of a tax, justified in the reasonable amounts exacted, as recompense for the special use, for the purpose of gain, of the highways. *Southern Motorways, Inc. v. Perry*, 39 F.2d 145 (N.D. Ga. 1930) (decided under Ga. L. 1929, p. 293).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 59, 74, 80 et seq. 13 Am. Jur. 2d, Carriers, §§ 148, 149, 151.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 307, 308.

40-1-160. Transportation of persons under age 21 drinking alcohol.

Any limousine carrier subject to the jurisdiction of the commissioner that transports passengers shall comply with the provisions of paragraph (1) of subsection (a) of Code Section 3-3-23 and Code Section 3-9-6, concerning consumption of alcoholic beverages. The commissioner shall provide to all such limousine carriers, at the time of registration a certificate, an informational packet emphasizing the prohibition on alcohol consumption by persons under the age of 21 while being transported by the limousine carrier. (Code 1981, § 40-1-160, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-161. Revocation, alteration, or amendment of limousine certificate.

The commissioner may, at any time after notice and opportunity to be heard and for reasonable cause, revoke, alter, or amend any limousine certificate issued under this part, or under prior law, if it shall be made to appear that the holder of the certificate has willfully violated or refused to observe any of the lawful and reasonable orders, rules, or regulations prescribed by the commissioner or any of the provisions of this part or any other law of this state regulating or taxing motor vehicles, or both, or if in the opinion of the commissioner the holder of the certificate is not furnishing adequate service. An administrative hearing shall be conducted in accordance with the procedures for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the provisions of Code Section 40-1-56. (Code 1981, § 40-1-161, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 15/HB 323; Ga. L. 2014, p. 866, § 40/SB 340.)

The 2013 amendment, effective July 1, 2013, added the second sentence in this Code section. See editor's note for applicability.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2012, the subsection (a) designation was deleted as there was no subsection (b).

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

40-1-162. State regulates limousine carriers.

The State of Georgia fully occupies and preempts the entire field of regulation over limousine carriers as regulated by this part; provided, however, that the governing authority of any county or municipal airport shall be authorized to permit any limousine carrier doing business at any such airport and may establish fees as part of such permitting process; provided, further, that such fees shall not exceed the airport's approximate cost of permitting and regulating limousine carriers; and provided, further, that such governing authorities of such airports shall accept a chauffeur's endorsement issued by the Department of Driver Services to the driver and evidence of a certificate issued to the limousine carrier by the Department of Public Safety as adequate evidence of sufficient criminal background investigations and shall not require any fee for any further criminal background investigation. The list of licensed limousine carriers on the website of the Department of Public Safety shall be sufficient evidence that a limousine carrier has a certificate issued by the Department of Public Safety. (Code 1981, § 40-1-162, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-163. Rates and charges.

(a) Notwithstanding the powers granted to the department regarding tariffs of other motor carriers, the department is not authorized to set, adjust, or change rates or charges for transportation of passengers, property, or passengers and property by a vehicle of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier.

(b) Any tariff issued by the department that exists as of June 30, 2007, that regulates the rates or charges for transportation of passengers, property, or passengers and property by a vehicle of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier shall be void. (Code 1981, § 40-1-163, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 16/HB 323.)

The 2013 amendment, effective July 1, 2013, substituted “Code Section 40-1-151” for “Code Section 40-1-118” near the end of subsections (a) and (b). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 838,

§ 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

40-1-164. Notice and opportunity to be heard by carriers.

Before the department shall enter any order, regulation, or requirement directed against any limousine carrier, such carrier shall first be given reasonable notice and an opportunity to be heard on the matter. (Code 1981, § 40-1-164, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-165. Motor carrier authorization number of limousine carriers included in advertisement.

In any advertisement for a limousine carrier, whether by print, radio, television, other broadcast, or electronic media including but not limited to Internet advertising and any listing or sites on any website, the limousine carrier shall include the motor carrier authorization number issued to it by the Department of Public Safety. The department shall be required to issue a motor carrier authorization number to each registered limousine carrier. Whenever the department, after a hearing conducted in accordance with the provisions of Code Section 40-1-56, finds that any person is advertising in violation of this Code section, the department may impose a fine of not more than \$500.00 for an initial violation and not more than \$15,000.00 for a second or subsequent violation. (Code 1981, § 40-1-165, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-166. Commercial indemnity and liability insurance.

Each limousine carrier shall obtain and maintain commercial indemnity and liability insurance with an insurance company authorized to do business in this state which policy shall provide for the protection of passengers and property carried and of the public against injury proximately caused by the negligence of the limousine carrier, its servants, and its agents. The minimum amount of such insurance shall be:

(1) For capacity of 12 passengers or less, \$300,000.00 for bodily injuries to or death of all persons in any one accident with a maximum of \$100,000.00 for bodily injuries to or death of one person, and \$50,000.00 for loss of damage in any one accident to property of others, excluding cargo; or

(2) For capacity of more than 12 passengers, \$500,000.00 for bodily injuries to or death of all persons in any one accident with a maximum of \$100,000.00 for bodily injuries to or death of one person, and \$50,000.00 for loss of damage in any one accident to property of others, excluding cargo. (Code 1981, § 40-1-166, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-167. Required information on license plates of limousines.

Each limousine carrier which registers any vehicle under this article shall, for each such certificated vehicle, affix to the center of the front bumper of each such certificated vehicle a standard size license plate bearing the following information:

- (1) Limousine carrier name;
- (2) City and state of principal domicile;
- (3) Company telephone number; and

(4) Motor carrier identification number if the limousine carrier is a commercial motor carrier or motor carrier authorization number issued by the department if the limousine carrier is a lightweight commercial vehicle.

The cost for such license plate shall be the sole responsibility of the limousine carrier and must be placed on each certificated vehicle prior to such vehicle being placed in service. (Code 1981, § 40-1-167, enacted by Ga. L. 2012, p. 580, § 1/HB 865; Ga. L. 2013, p. 838, § 17/HB 323.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: "Each limousine

carrier which registers any vehicle under this article shall, for each such certificated vehicle, affix to the center of the front bumper of each such certificated vehicle a

standard size license plate bearing the following information: (1) limousine carrier name, (2) city and state of principal domicile, (3) company telephone number, and (4) the vehicle classification, IE-1. The cost for such license plate shall be the sole responsibility of the limousine carrier and must be placed on each certificated vehicle

prior to said vehicle being placed in service." See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

40-1-168. Local taxation of limousine carriers prohibited.

No subdivision of this state, including cities, townships, or counties, shall levy any excise, license, or occupation tax of any nature, on the right of a limousine carrier to operate equipment, or on the equipment, or on any incidents of the business of a limousine carrier. (Code 1981, § 40-1-168, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

40-1-169. Enforcement.

The department is authorized to enforce the provisions of this part. Additionally, the department may hear a petition by a third party asserting that a limousine carrier has violated Code Section 40-1-152 and may impose the penalties and seek the remedies set out in Code Section 40-1-56 if the department finds such a violation. (Code 1981, § 40-1-169, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, in the second sentence, "Code Section" was inserted twice and "of this title" was deleted following "40-1-56".

40-1-170. Application to every vehicle controlled by limousine carrier.

The provisions of this part and the powers granted to the department by this part to regulate limousine carriers shall apply to every vehicle of a type listed in Code Section 40-1-151 that is managed, operated, owned, leased, rented, or controlled by a limousine carrier. (Code 1981, § 40-1-170, enacted by Ga. L. 2012, p. 580, § 1/HB 865.)

CHAPTER 2

REGISTRATION AND LICENSING OF MOTOR VEHICLES

Article 1

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40-2-3.	False statement in application as constituting false swearing.
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40-2-32.	Commemoration of college or university [Repealed].

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40-2-33.	Issuance of license plates; payment and disposition of fees; compensation of tag agents; required identification.	40-2-46.	License plate commemorating 1996 Olympic Games [Repealed].
40-2-34.	Reports and remittances by tag agents.	40-2-47.	Permanent registration and license plates for certain trailers; "leased or rented trailer" defined.
40-2-35.	Commissioner to have license plates by December 1.	40-2-48 through 40-2-49.1.	[Repealed].
40-2-36.	Commissioner to furnish license plates to tag agents; inventories and affidavits of missing plates; sale of plates for vehicles weighing more than 26,000 pounds.	40-2-49.2.	License plates promoting the conservation of wildflowers [Repealed].
40-2-36.1.	Redesignated.	40-2-49.3.	License plates promoting dog and cat reproductive sterilization support programs [Repealed].
40-2-37.	Registration and licensing of vehicles of state and political subdivisions.		Article 2A
40-2-38.	Registration and licensing of manufacturers, distributors, and dealers; dealer plates; calculation of registration requirements.		Fleet Vehicles
40-2-38.1.	Transporter license plate.	40-2-50.	Definitions.
40-2-39.	Registration and licensing of new motor vehicle dealers; temporary site permits.	40-2-51.	Fleet enrollment.
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		40-2-61.	Special license plates for U.S. Senators and Congressmen, Governor, Lieutenant Governor, Speaker of House of Representatives, Justices of Supreme Court, and Judges of Court of Appeals.
		40-2-62.	Special license plates for

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	members of General Assembly.		Patrol or law enforcement officers of the Motor Carrier Compliance Division.
40-2-63.	Special license plates for sheriffs.	40-2-83.	Special or prestige license plates for jointly owned vehicles; surrendering when joint ownership ceases.
40-2-64.	Honorary consuls' license plates.	40-2-84.	License plates for veterans awarded Purple Heart.
40-2-64.1.	Foreign Organization license plates.	40-2-85.	License plates for veterans who survived attack on Pearl Harbor.
40-2-65.	Special license plates for members of active reserve components of the United States.	40-2-85.1.	Special and distinctive license plates for veterans.
40-2-66.	Special license plates for members of Georgia National Guard.	40-2-85.2.	Veterans of the Chosin Reservoir Campaign of 1950.
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40-2-68.	Special license plates for Medal of Honor winners.	40-2-86.	Special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or non-profit corporations.
40-2-69.	Free license plates and revalidation decals for certain disabled veterans.	40-2-86.1.	Special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or non-profit corporations — Plates to identify persons with diabetes, honor veterans of the armed services, and honor the Georgia Association of Realtors.
40-2-70.	Special license plates for disabled veterans not qualifying under Code Section 40-2-69.	40-2-86.2.	License plates for Shrine hospitals for children [Repealed].
40-2-71.	Design of disabled veteran plates; restrictions on issuance and transfer.	40-2-86.3.	License plates commemorating Civil War battlefields and historic sites [Repealed].
40-2-71.1.	Redesignated.	40-2-86.4.	License plates supporting public schools [Repealed].
40-2-72.	Penalty for violation of Code Sections 40-2-69 through 40-2-71.	40-2-86.5.	Special license plates honoring educators; requirements; copyright; issuance; use of funds; transfer of plates [Repealed].
40-2-73.	Special license plates for former prisoners of war.	40-2-86.6.	License plate promoting conservation and enhancement of trout populations [Repealed].
40-2-74.	Special license plates for persons with disabilities.	40-2-86.7 through 40-2-86.12.	[Repealed].
40-2-74.1.	Special decal for persons with disabilities.	40-2-86.13.	Special license plates promoting historic preservation efforts [Repealed].
40-2-75.	Special license plates for amateur radio operators [Repealed].		
40-2-75.1.	Redesignated.		
40-2-75.2.	Redesignated.		
40-2-76 through 40-2-78.	[Repealed].		
40-2-79.	Leased or rented trailers [Repealed].		
40-2-80.	Transfer of special license plates.		
40-2-81.	Reserved.		
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- 40-2-86.14. Special license plates for licensed physicians [Repealed].
- 40-2-86.15 through 40-2-86.17. [Repealed].
- 40-2-86.18. Redesignated.
- 40-2-86.19. Special license plates supporting the Global War on Terrorism and Operation Enduring Freedom [Repealed].
- 40-2-86.20. Special license plates supporting the Global War on Terrorism and Iraqi freedom [Repealed].
- 40-2-86.21. Redesignated.
- 40-2-86.22. Redesignated.

Article 3A

**Reciprocal Agreements for
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- 40-2-87. Definitions.
- 40-2-88. Reciprocal agreements for registration of commercial vehicles on apportionment basis; waiver of penalties.
- 40-2-88.1. Electronic filing system for registration of commercial vehicles.
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- 40-2-90. Operation of vehicles registered in other states.
- 40-2-91. Commissioner authorized to negotiate reciprocal agreements with adjoining states.
- 40-2-92. Reciprocal agreements subject to confirmation by General Assembly.
- 40-2-93. Reciprocal agreements while General Assembly not in session.
- 40-2-94. Publication of terms of reciprocal agreements; rules and regulations for enforcement.
- 40-2-95. Code Sections 40-2-91 through 40-2-93 inapplicable to motor vehicles for hire.

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- 40-2-110. "Motor truck" defined.
- 40-2-111. Highway use permit required for certain unregistered motor trucks; application; fee; identification tag to be displayed and permit to be carried in truck.
- 40-2-112. Additional fee for each round trip into state.
- 40-2-113. Collection of taxes and fees; rules and regulations.
- 40-2-114. Unlawful acts; penalties.

Article 6

**Administration and Enforcement of
Chapter**

- 40-2-130. Records of certificates of registration.
- 40-2-131. Disposition of fees.
- 40-2-132. Destruction of records by commissioner.
- 40-2-133. Duty of arresting officers.
- 40-2-134. Authority of certified law enforcement officers.
- 40-2-135. Revocation of license plates.
- 40-2-135.1. Suspension of offender's motor vehicle registration for multiple violations of toll provisions.
- 40-2-136. Surrender of license plates upon second or subsequent convictions of driving under the influence.
- 40-2-137. Definitions; notice of insurance coverage and termination; electronic transmission of notice; public inspection of minimum liability insurance records; duties of vehicle owner; lapse fee; suspension of vehicle registrations; waiver of lapse fee; persons on active military duty.
- 40-2-138. Suspension or revocation of commercial vehicles when not in compliance with federal regulations.

Article 6A

**Administration of Federal Unified
Carrier Registration Act of 2005**

- 40-2-140. Department of Public Safety

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to administer provisions of this article; registration and fee requirements; evidence of continuing education; requirements for obtaining operating authority; collection, retention, and utilization of fees; regulatory compliance inspections; penalties.

Article 7

Motor Vehicle License Fees and Classes

- 40-2-150. Definitions.
- 40-2-151. Annual license fees for operation of vehicles; fee for permanent licensing of certain trailers.
- 40-2-152. Fees for apportionable vehicles; restricted license plates for vehicles.
- 40-2-153. Registration and licensing of makers and dealers of motor vehicles; application; fee; dealer's number plate; prohibited uses; licensing of persons transporting motor vehicles, mobile homes, or house trailers; exemption of farm tractors [Repealed].
- 40-2-154. License plates for different classes of vehicles; distinguishing markings.
- 40-2-155. Transfers of annual licenses and plates to certain other vehicles; application and fee; payment of additional fee when substituted vehicle required to have higher-priced plate.
- 40-2-156. Rate of annual license fee for certain vehicles registered during specified parts of year.

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- 40-2-157. Payment of fees under International Registration Plan.
- 40-2-158. Fee assessment to registrants.
- 40-2-159. Time of application and payment for plate.
- 40-2-160. Liability of resident and non-resident motor vehicle operators for payment of taxes and fees; proration on daily basis of fees imposed on motor vehicles hauling seasonal agricultural products grown in state; issuance of special plate.
- 40-2-161. Rate of annual license fee for vehicles carrying passengers over route of 50 miles or less.
- 40-2-162. Apportionment of cost of annual license fees of motor buses to motor common carriers of passengers for hire operating partially outside state; formula; rules.
- 40-2-163. Purchase by truck or tractor owner of higher weight license plate; payment of difference between fees.
- 40-2-164. Decrease of allowable maximum weight (license class) for trucks and tractors; time; certain trucks not entitled to partial year license.
- 40-2-165. Purchase of new license plate by owner of truck weighing more than carried plate permits; credit for surrendered plate.
- 40-2-166. Violation of article; penalty.
- 40-2-167. Definitions; separately stated fees in a rental agreement; recoverable fees and taxes.
- 40-2-168. Registration and licensing of taxicabs and limousines.

Cross references. — General duty of Georgia State Patrol to check motor vehicles for proper licensing, § 35-2-33. Procedure when date for payment of tax or license fee falls on Saturday, Sunday, or legal holiday, § 48-2-39. Ad valorem taxa-

tion of motor vehicles, § 48-5-440 et seq. Motor vehicle license fees, T. 48, C. 10.

Editor's notes. — Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify" laws relating to certain aspects of the

motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particu-

larly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

JUDICIAL DECISIONS

Cited in Georgia Power Co. v. (1948); Freeman v. Ryder Truck Lines, 244 Musgrove, 77 Ga. App. 880, 50 S.E.2d 118 Ga. 80, 259 S.E.2d 36 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Probate courts lack jurisdiction as to violations. — Probate courts have no authority or jurisdiction in violations arising under the motor vehicle and traffic law. 1965-66 Op. Att'y Gen. No. 65-18.

Constable can make arrests for vio-

lations of the motor vehicle and traffic law; if a constable made such arrests, the constable would do so at the constable's own expense and would be entitled to no fees. 1968 Op. Att'y Gen. No. 68-324 (but see O.C.G.A. § 15-10-103).

RESEARCH REFERENCES

ALR. — License tax or fee on automobiles as affected by interstate commerce clause, 25 ALR 37; 52 ALR 533; 115 ALR 1105.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 ALR 532; 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375.

Validity of automobile registration or license fee as affected by classification or discrimination, 126 ALR 1419.

Unlicensed automobile owned by insured as "owned automobile" within language of automobile liability insurance, 21 ALR4th 918.

ARTICLE 1

GENERAL PROVISIONS

40-2-1. Definitions.

As used in this chapter, the term:

(1) "Cancellation of vehicle registration" means the annulment or termination by formal action of the department of a person's vehicle registration because of an error or defect in the registration or because the person is no longer entitled to such registration. The cancellation of registration is without prejudice and application for a new registration may be made at any time after such cancellation.

(2) "Commissioner" means the state revenue commissioner.

(3) "Department" means the Department of Revenue.

(4) "Motor carrier" means:

(A) Any entity subject to the terms of the Unified Carrier Registration Agreement pursuant to 49 U.S.C. Section 14504a whether engaged in interstate or intrastate commerce, or both; or

(B) Any entity defined by the commissioner or commissioner of public safety who operates or controls commercial motor vehicles as defined in 49 C.F.R. Section 390.5 or this chapter whether operated in interstate or intrastate commerce, or both.

(5) "Operating authority" means the registration required by 49 U.S.C. Section 13902, 49 C.F.R. Part 365, 49 C.F.R. Part 368, and 49 C.F.R. Section 392.9a.

(6) "Regulatory compliance inspection" means the examination of facilities, property, buildings, vehicles, drivers, employees, cargo, packages, records, books, or supporting documentation kept or required to be kept in the normal course of motor carrier business or enterprise operations.

(7) "Resident" means a person who has a permanent home or domicile in Georgia and to which, having been absent, he or she has the intention of returning. For the purposes of this chapter, there is a rebuttable presumption that any person who, except for infrequent, brief absences, has been present in the state for 30 or more days is a resident.

(8) "Revocation of vehicle registration" means the termination by formal action of the department of a vehicle registration, which registration shall not be subject to renewal or reinstatement, except that an application for a new registration may be presented and acted upon by the department after the expiration of the applicable period of time prescribed by law.

(9) "Suspension of vehicle registration" means the temporary withdrawal by formal action of the department of a vehicle registration, which temporary withdrawal shall be for a period specifically designated by the department. (Code 1981, § 40-2-1; Ga. L. 1990, p. 2048, § 2; Ga. L. 1991, p. 327, § 1; Ga. L. 2000, p. 951, § 3-1; Ga. L. 2002, p. 1024, § 1; Ga. L. 2005, p. 334, § 14-1/HB 501; Ga. L. 2009, p. 629, § 1/HB 57; Ga. L. 2012, p. 580, § 8/HB 865.)

The 2012 amendment, effective July 1, 2012, in subparagraph (4)(B), substituted "commissioner or commissioner of public safety" for "commissioner, commissioner of public safety, or Public Service Commission", and deleted ", Title 46," following "Section 390.5".

Editor's notes. — This Code section was created as part of the Code revision

and was thus enacted by Ga. L. 1981, Ex. Sess. p. 8 (Code Enactment Act).

Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of the authority

of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds

appropriated or otherwise made available for such purpose."

40-2-2. Violations of chapter generally; penalties.

Except as otherwise provided in this chapter, any person who violates any provision of this chapter shall be guilty of a misdemeanor. (Ga. L. 1925, p. 315, § 2; Ga. L. 1927, p. 226, § 26; Ga. L. 1931, p. 7, § 84; Code 1933, §§ 68-9902, 68-9908; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 5; Ga. L. 1990, p. 2048, § 2.)

JUDICIAL DECISIONS

Cited in *Floyd v. State*, 186 Ga. 445, 197 S.E. 837 (1938); *Hawkins v. State*, 58 Ga. App. 386, 198 S.E. 551 (1938); *American Bakeries Co. v. Johnson*, 59 Ga. App. 150, 200 S.E. 485 (1938); *Passley v. State*, 62 Ga. App. 88, 8 S.E.2d 131 (1940); *Newmans v. State*, 65 Ga. App. 288, 16 S.E.2d 87 (1941); *Gooseby v. Pinson Tire Co.*, 65 Ga. App. 837, 16 S.E.2d 767 (1941); *Collins v. State*, 66 Ga. App. 325, 18 S.E.2d 24 (1941); *Williams v. Grier*, 196

Ga. 327, 26 S.E.2d 698 (1943); *Gallahar v. George A. Rheman Co.*, 50 F. Supp. 655 (S.D. Ga. 1943); *Bentley v. State*, 70 Ga. App. 494, 28 S.E.2d 658 (1944); *Thomas v. State*, 73 Ga. App. 803, 38 S.E.2d 188 (1946); *Smith v. AMOCO*, 77 Ga. App. 463, 49 S.E.2d 90 (1948); *Dodd v. State*, 85 Ga. App. 589, 69 S.E.2d 784 (1952); *Hammond v. Young*, 89 Ga. App. 669, 80 S.E.2d 825 (1954); *DOT v. Del-Cook Timber Co.*, 248 Ga. 734, 285 S.E.2d 913 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Probate courts lack jurisdiction as to violations. — Probate courts have no authority or jurisdiction in violations arising under the motor vehicle and traffic law. 1965-66 Op. Att'y Gen. No. 65-18.

Dealer using tags for other than demonstrating or transporting vehicles. — Dealer who permits dealer tags to be used for purposes other than demon-

strating or transporting dealer-owned vehicles for sale may and should be prosecuted for a misdemeanor under the provision of former Code 1933, §§ 68-9902 and 66-9908, but the tags may not properly be picked up by a law enforcement officer unless the dealer registration has been revoked for cause. 1954-56 Op. Att'y Gen. p. 472 (see O.C.G.A. § 40-2-2).

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1504 et seq., 1748 et seq.

ALR. — Civil rights and liabilities as

affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 ALR 374.

40-2-3. False statement in application as constituting false swearing.

Any person who shall make any false statement in any application for the registration of any vehicle, or in transferring any certificate of registration, or in applying for a new certificate of registration, shall be

guilty of false swearing, whether or not an oath is actually administered to him, if such statement shall purport to be under oath. On conviction of such offense, such person shall be punished as provided by Code Section 16-10-71. (Ga. L. 1925, p. 315, § 2; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-9902; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 5; Ga. L. 1990, p. 2048, § 2.)

JUDICIAL DECISIONS

Lesser included offenses. — Operating motor vehicle without insurance is not lesser included offense of false swearing. *Bowen v. State*, 173 Ga. App. 361, 326 S.E.2d 525 (1985).

Cited in *Holland v. State*, 172 Ga. App. 444, 323 S.E.2d 632 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 255. 21

Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

40-2-4. Manufacture of plates and decals prohibited.

(a) It shall be unlawful for any person, firm, or corporation to make, sell, or issue any license plate or revalidation decal.

(b) Any person, firm, or corporation violating subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1921, p. 255, § 11; Code 1933, §§ 68-216, 68-9905; Ga. L. 1990, p. 2048, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Only the State of Georgia may manufacture license tags, and the supervisor of purchases (now Department of Administrative Services) is not authorized to

process a requisition for license plates to any individual person, firm, or corporation. 1960-61 Op. Att'y Gen. p. 297.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, § 1636 et seq.

ALR. — Civil rights and liabilities as

affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 ALR 374.

40-2-5. Use of license plate for purpose of concealing or misrepresenting identity of vehicle; use of expired prestige license plate.

(a) Except as otherwise provided in this chapter, it shall be unlawful:

- (1) To remove or transfer a license plate from the motor vehicle for which such license plate was issued;
 - (2) To sell or otherwise transfer or dispose of a license plate upon or for use on any motor vehicle other than the vehicle for which such license plate was issued;
 - (3) To buy, receive, use, or possess for use on a motor vehicle any license plate not issued for use on such motor vehicle; or
 - (4) To operate a motor vehicle bearing a license plate which was improperly removed or transferred from another vehicle.
- (b) Any person who shall knowingly violate any provision of subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 or by confinement for not more than 12 months, or both.
- (c) It shall not be unlawful for any person to place an expired prestige license plate on the front of a motor vehicle provided that such vehicle also bears a current valid license plate on the rear of such vehicle. (Ga. L. 1918, p. 264, §§ 1, 2; Code 1933, § 68-9916; Ga. L. 1966, p. 10, § 1; Ga. L. 1990, p. 1657, § 2; Ga. L. 1990, p. 2048, § 2.)

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

Traffic stop based on suspicion of license plate violation. — Trial court did not err in denying motions to suppress filed by the two defendants because the officer: (1) had a reasonable and sufficient basis for initiating a traffic stop of the car the defendants were traveling in based on a belief that the license plate on the subject vehicle might have belonged on another car, and hence, was illegally transferred; and (2) did not improperly prolong the stop once the defendants told conflicting stories of the defendants' travels and one declined to grant the officer consent to search. *Andrews v. State*, 289 Ga. App. 679, 658 S.E.2d 126 (2008), cert. denied, 2008 Ga. LEXIS 507 (Ga. 2008).

Lesser included offenses. — Misdemeanor offense of affixing to a vehicle a license plate not authorized for use on that vehicle is not a lesser included offense of the felony of using a motor vehicle

license plate upon a vehicle for which the plate was not issued. *Dismuke v. State*, 142 Ga. App. 381, 236 S.E.2d 12 (1977).

Nondisclosure that vehicle was rebuilt. — When the certificate of title which defendant obtained for automobile did not disclose on the title's face that the vehicle had been rebuilt, the jury was authorized to conclude that the defendant had knowingly concealed or misrepresented the identity thereof. *Martin v. State*, 160 Ga. App. 275, 287 S.E.2d 244 (1981).

Jury to decide tag issue. — Court of Appeals of Georgia rejected a defendant's sufficiency of the evidence challenge as it was for the jury to accept or reject the defendant's explanations as to whether the operation of a Mercury bearing a Ford tag was improper and knowing. *Rylee v. State*, 288 Ga. App. 784, 655 S.E.2d 239 (2007).

Rule of lenity did not apply. — Because the defendant was convicted and sentenced for a violation of O.C.G.A. § 40-2-5, and not of a violation of O.C.G.A. § 40-2-7, for the single and distinct offense of operating a motor vehicle bearing an improper tag, the Court of Appeals of Georgia had no occasion to apply the rule of lenity. *Rylee v. State*, 288 Ga. App. 784, 655 S.E.2d 239 (2007).

Cited in *Flynn v. State*, 88 Ga. App. 709, 77 S.E.2d 559 (1953); *Daniel v. State*, 118 Ga. App. 370, 163 S.E.2d 863 (1968); *Walker v. State*, 130 Ga. App. 860, 205 S.E.2d 49 (1974); *Rogers v. State*, 185 Ga. App. 211, 363 S.E.2d 846 (1987); *Northern v. State*, 285 Ga. App. 303, 645 S.E.2d 701 (2007).

RESEARCH REFERENCES

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or

motorcycle, or licensing of operator, 54 ALR 374.

40-2-6. Alteration of license plates; operation of vehicle with altered or improperly transferred plate.

Except as otherwise provided in this chapter, any person who shall willfully mutilate, obliterate, deface, alter, change, or conceal any numeral, letter, character, county designation, or other marking of any license plate issued under the motor vehicle registration laws of this state; who shall knowingly operate a vehicle bearing a license plate on which any numeral, letter, character, county designation, or other marking has been willfully mutilated, obliterated, defaced, altered, changed, or concealed; or who shall knowingly operate a vehicle bearing a license plate issued for another vehicle and not properly transferred as provided by law shall be guilty of a misdemeanor. (Code 1933, § 68-9929, enacted by Ga. L. 1957, p. 626, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 2; Ga. L. 1991, p. 1145, § 1; Ga. L. 1997, p. 419, § 2.)

Law reviews. — For article commenting on the 1997 amendment of this Code

section, see 14 Ga. St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Traffic stop based on suspicion of license plate violation. — Trial court did not err in denying motions to suppress filed by the two defendants because the officer: (1) had a reasonable and sufficient basis for initiating a traffic stop of the car the defendants were traveling in based on a belief that the license plate on the subject vehicle might have belonged on another car, and hence, was illegally transferred; and (2) did not improperly prolong

the stop once the defendants told conflicting stories of the defendants' travels and one declined to grant the officer consent to search. *Andrews v. State*, 289 Ga. App. 679, 658 S.E.2d 126 (2008), cert. denied, 2008 Ga. LEXIS 507 (Ga. 2008).

Cited in *Undercofler v. White*, 113 Ga. App. 853, 149 S.E.2d 845 (1966); *Self v. State*, 245 Ga. App. 270, 537 S.E.2d 723 (2000); *Dodds v. State*, 288 Ga. App. 231, 653 S.E.2d 828 (2007); *Thompson v. State*,

289 Ga. App. 661, 658 S.E.2d 122 (2007);
Hernandez-Lopez v. State, 319 Ga. App.
662, 738 S.E.2d 116 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 257. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, § 1636 et seq.

ALR. — Civil rights and liabilities as affected by failure to comply with regula-

tions as to registration of automobile or motorcycle, or licensing of operator, 54 ALR 374.

Validity and construction of statute making it a criminal offense to “tamper” with motor vehicle or contents, or to obscure registration plates, 57 ALR3d 606.

40-2-6.1. Obscuring license plate in order to impede surveillance equipment.

Any person who willfully covers any license plate with plastic, other material, or any part of his or her body in order to prevent or impede the ability of surveillance equipment to clearly photograph or otherwise obtain a clear image of the license plate is guilty of a misdemeanor and shall be punished by a fine not to exceed \$1,000.00. (Code 1981, § 40-2-6.1, enacted by Ga. L. 2005, p. 691, § 1/SB 93.)

JUDICIAL DECISIONS

Violation of § 40-2-6.1 allowed law enforcement officer to make valid traffic stop. — Defendant’s commission of a traffic offense pursuant to O.C.G.A. § 40-2-6.1 allowed an officer to make a

valid traffic stop of the defendant’s vehicle. *Thomas v. State*, 289 Ga. App. 161, 657 S.E.2d 247 (2008), cert. dismissed, No. S08C0959, 2008 Ga. LEXIS 491 (Ga. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — This offense is not one for which those charged with a violation are

to be fingerprinted. 2006 Op. Att’y Gen. No. 2006-2.

40-2-7. Removing or affixing license plate with intent to conceal or misrepresent.

A person who removes a license plate from a vehicle or affixes to a vehicle a license plate not authorized by law for use on it, in either case with intent to conceal or misrepresent the identity of the vehicle or its owner, is guilty of a misdemeanor. As used in this Code section, “remove” includes deface or destroy. (Ga. L. 1961, p. 68, § 34; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 2.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1966, p. 10, § 1 are included in the annotations for this Code section.

Intent to misrepresent. — Evidence was ample to support defendant's conviction for intending to misrepresent or conceal the identity of the stolen vehicle the defendant possessed or the vehicle's owner as the evidence showed that the defendant knew that the license tag did not belong on the vehicle and that the defendant affixed that license plate to keep the city from learning that the vehicle was abandoned. *Rose v. State*, 258 Ga. App. 232, 573 S.E.2d 465 (2002).

Not lesser included offense of O.C.G.A. § 40-2-5 offense. — Misdemeanor offense of affixing to a vehicle a license plate not authorized for use on that vehicle is not a lesser included offense of the felony offense of using a motor vehicle license plate upon a vehicle for

which the plate was not issued. *Dismuke v. State*, 142 Ga. App. 381, 236 S.E.2d 12 (1977) (decided under Ga. L. 1966, p. 10, § 1).

Rule of lenity did not apply. — Because the defendant was convicted and sentenced for a violation of O.C.G.A. § 40-2-5, and not for a violation of O.C.G.A. § 40-2-7, for the single and distinct offense of operating a motor vehicle bearing an improper tag, the Court of Appeals of Georgia had no occasion to apply the rule of lenity. *Rylee v. State*, 288 Ga. App. 784, 655 S.E.2d 239 (2007).

Cited in *Barron v. State*, 109 Ga. App. 786, 137 S.E.2d 690 (1964); *Law v. State*, 110 Ga. App. 364, 138 S.E.2d 588 (1964); *Undercoffer v. White*, 113 Ga. App. 853, 149 S.E.2d 845 (1966); *Daniel v. State*, 118 Ga. App. 370, 163 S.E.2d 863 (1968); *Walker v. State*, 130 Ga. App. 860, 205 S.E.2d 49 (1974); *Northern v. State*, 285 Ga. App. 303, 645 S.E.2d 701 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 257, 392.

ALR. — Validity and construction of statute making it a criminal offense to

"tamper" with motor vehicle or contents, or to obscure registration plates, 57 ALR3d 606.

40-2-8. Operation of unregistered vehicle or vehicle without current license plate, revalidation decal, or county decal; storage of unlicensed vehicle; jurisdiction; display of temporary plate; revision and extension of temporary plate; disposition of fines.

(a) Any person owning or operating any vehicle described in Code Section 40-2-20 on any public highway or street without complying with that Code section shall be guilty of a misdemeanor, provided that a person shall register his or her motor vehicle within 30 days after becoming a resident of this state. Any person renting, leasing, or loaning any vehicle described in Code Section 40-2-20 which is being used on any public highway or street without complying with that Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of \$100.00 for each violation; and each day that such vehicle is operated in violation of Code Section 40-2-20 shall be deemed to be a separate and distinct offense.

(b)(1) Any vehicle operated in the State of Georgia which is required to be registered and which does not have attached to the rear thereof a numbered license plate and current revalidation decal affixed to a corner or corners of the license plate as designated by the commissioner, if required, shall be stored at the owner's risk and expense by any law enforcement officer of the State of Georgia, unless such operation is otherwise permitted by this chapter.

(2)(A) It shall be a misdemeanor to operate any vehicle required to be registered in the State of Georgia without a valid numbered license plate properly validated, unless such operation is otherwise permitted under this chapter; and provided, further, that the purchaser of a new vehicle or a used vehicle from a dealer of new or used motor vehicles who displays a temporary plate issued as provided by subparagraph (B) of this paragraph may operate such vehicle on the public highways and streets of this state without a current valid license plate during the period within which the purchaser is required by Code Section 40-2-20. An owner acquiring a motor vehicle from an entity that is not a new or used vehicle dealer shall register such vehicle as provided for in Code Section 40-2-29 unless such vehicle is to be registered under the International Registration Plan pursuant to Article 3A of this chapter.

(B)(i) Any dealer of new or used motor vehicles shall issue to the purchaser of a vehicle at the time of sale thereof, unless such vehicle is to be registered under the International Registration Plan, a temporary plate as provided for by department rules or regulations which may bear the dealer's name and location and shall bear the expiration date of the period within which the purchaser is required by Code Section 40-2-20 to register such vehicle. The expiration date of such a temporary plate may be revised and extended by the county tag agent upon application by the dealer, the purchaser, or the transferee if an extension of the purchaser's initial registration period has been granted as provided by Code Section 40-2-20. Such temporary plate shall not resemble a license plate issued by this state and shall be issued without charge or fee. The requirements of this subparagraph do not apply to a dealer whose primary business is the sale of salvage motor vehicles and other vehicles on which total loss claims have been paid by insurers.

(ii) All temporary plates issued by dealers to purchasers of vehicles shall be of a standard design prescribed by regulation promulgated by the department. The department may provide by rule or regulation for the sale and distribution of such temporary plates by third parties in accordance with paragraph (3) of this subsection.

(3) All sellers and distributors of temporary license plates shall maintain an inventory record of temporary license plates by number and name of the dealer.

(4) The purchaser and operator of a vehicle shall not be subject to the penalties set forth in this Code section during the period allowed for the registration. If the owner of such vehicle presents evidence that such owner has properly applied for the registration of such vehicle, but that the license plate or revalidation decal has not been delivered to such owner, then the owner shall not be subject to the penalties enumerated in this subsection.

(c) It shall be unlawful and punishable as for a misdemeanor to operate any vehicle required to be registered in the State of Georgia without a valid county decal designating the county where the vehicle was last registered, unless such operation is otherwise permitted under this chapter. Any person convicted of such offense shall be punished by a fine of \$25.00 for a first offense and \$100.00 for a second or subsequent such offense. However, a county name decal shall not be required if there is no space provided for a county name decal on the current license plate. (Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 2; Code 1933, §§ 68-214, 68-9901; Ga. L. 1943, p. 341, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 1, § 1; Ga. L. 1969, p. 266, § 3; Ga. L. 1977, p. 1039, § 1; Ga. L. 1980, p. 746, § 1; Ga. L. 1981, p. 714, § 4; Ga. L. 1982, p. 1584, §§ 2, 5; Ga. L. 1986, p. 1053, § 1; Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2785, § 1.3; Ga. L. 1993, p. 1260, § 1; Ga. L. 1995, p. 809, § 1; Ga. L. 1996, p. 1118, § 1; Ga. L. 1997, p. 419, § 3; Ga. L. 1998, p. 1179, § 3; Ga. L. 2000, p. 523, § 1; Ga. L. 2001, p. 1173, § 1-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 321, § 1/HB 455; Ga. L. 2005, p. 334, § 14-2/HB 501; Ga. L. 2010, p. 143, § 2/HB 1005; Ga. L. 2011, p. 479, § 10.1/HB 112; Ga. L. 2012, p. 804, § 1/HB 985; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2012 amendment, effective July 1, 2012, in division (b)(2)(B)(i), deleted “unless at such time the purchaser makes application to transfer to such vehicle in accordance with this chapter a valid license plate issued to him or her or” preceding “unless such vehicle is to be registered” in the first sentence, substituted “upon application by the dealer, the purchaser, or the transferee” for “only” in the second sentence, and deleted the former fourth sentence which read: “Such temporary plate shall be surrendered to the tag agent at the time the vehicle is registered, and the tag agent shall destroy such temporary plate.”; and deleted the former first sentence of paragraph (b)(3), which read:

“All sellers and distributors of temporary license plates shall register with the department and shall be assigned a distinct identifier by the department.”

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “charge or fee” for “charge or fee therefore” in the next to last sentence of division (b)(2)(B)(i).

Cross references. — Jurisdiction over offenses under this Code section, § 40-13-22.

Editor’s notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: “Any local law enacted pursuant to Code Section 40-2-21, which is in

conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 17, not codified by the General Assembly, provides: "Any local Act enacted pursuant to Code Section 40-2-21 which is in conflict with the provisions of this Act shall stand repealed on the effective date on this Act; provided, however, that any local Act enacted in 1996 pursuant to the provisions of Code Section 40-2-21 as enacted by Act No. 385, Ga. L. 1995, which local Act provides for a four-month staggered registration period for a county, shall not be repealed by the provisions of this Act, but the registration period for such county shall be as provided by subparagraph (a)(1)(B) of Code Section

40-2-21 as enacted by this Act and not as provided in such local Act."

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Jurisdiction of federal court. — O.C.G.A. §§ 9-4-1, 9-5-1, 40-2-8, 40-3-6, 40-3-21, and 48-2-59 provide plaintiff challenging automobile "title transfer fee" with "plain, speedy and efficient" pre-tax and post-tax remedies by which a taxpayer could challenge the constitutional validity of a state tax, and so satisfied the criteria of the Tax Injunction Act, 18 U.S.C. § 1341, so as to bar jurisdiction of the federal court. *Johnsen v. Collins*, 875 F. Supp. 1571 (S.D. Ga. 1994).

Vehicle in custody not subject to levy and sale. — Vehicle being in custody of the law while held pursuant to former Code 1933, §§ 68-214 and 68-9901, a levy of execution by a sheriff was void and no valid sale could be made pursuant thereto. *Oxford v. Sanders*, 217 Ga. 820, 125 S.E.2d 483 (1962) (see O.C.G.A. § 40-2-8).

Investigatory stops for registration law violations. — Stopping a car with a drive-out tag solely to ascertain whether the driver was complying with Georgia's vehicle registration laws is not authorized; *Burtts v. State*, 211 Ga. App. 840, 440 S.E.2d 727 (1994) is expressly overruled along with any other cases which would authorize a traffic stop solely because a vehicle was being operated with a dealer's drive-out tag. *Bius v. State*, 254 Ga. App. 634, 563 S.E.2d 527 (2002).

Investigative stop justified. — Police officer was justified in approaching defen-

dant to determine if the operation of defendant's vehicle with an expired out-of-state tag was in violation of O.C.G.A. § 40-2-8. *Jordan v. State*, 223 Ga. App. 176, 477 S.E.2d 583 (1996).

Trial court properly denied the defendant's motion to suppress as the search was valid under Ga. Const. 1983, Art. I, Sec. I, Para. XIII; the officer stopped the defendant based on a reasonable suspicion that the defendant was driving with an invalid drive-out tag in violation of O.C.G.A. § 40-2-8, and the defendant's tag was suspicious because the tag did not have a strip on the bottom to prevent tampering with the expiration date. *Green v. State*, 282 Ga. App. 5, 637 S.E.2d 498 (2006).

State need not prove period of residence. — Allegation that the defendant had resided in the state for a period of 30 days or more was mere surplusage, and failure to prove the allegation did not constitute a fatal variance. *Gibson v. State*, 187 Ga. App. 769, 371 S.E.2d 413, cert. denied, 187 Ga. App. 907, 371 S.E.2d 413 (1988).

State need not prove current owner of vehicle. — State presented sufficient evidence that the defendant had operated a motor vehicle with an expired Mississippi tag on a public street of Georgia in violation of O.C.G.A. § 40-2-8(a). Al-

though the evidence did not show to whom the vehicle had been registered in Mississippi or whether the defendant had recently purchased the vehicle, the statute did authorize a finding that, regardless of who the current owner of the vehicle might actually be, the vehicle was not an automobile which was otherwise exempt from the requirement of registration in this state. *Keyser v. State*, 187 Ga. App. 95, 369 S.E.2d 309, cert. denied, 187 Ga. App. 908, 369 S.E.2d 309 (1988).

Traffic stop for compliance not unreasonably prolonged. — As an officer's questioning of the defendant after a traffic stop about the defendant's length of time in Georgia was done to determine whether the defendant was in compliance with O.C.G.A. §§ 40-2-8(a) and 40-5-20(a), and did not unreasonably prolong the stop, the defendant's rights under U.S. Const., amend. IV were not violated. Therefore, methamphetamine seized from the defendant's purse during the stop did not have to be suppressed. *Sommese v. State*, 299 Ga. App. 664, 683 S.E.2d 642 (2009).

Evidence sufficient to sustain conviction. — Because the defendant admit-

tedly lacked a driver's license, the tag on the car being driven was expired, and the defendant produced no evidence that the car had been recently purchased, and thus fell within the initial 30-day registration period during which a numbered license plate was not required, defendant's convictions were upheld on appeal. *Arellano v. State*, 289 Ga. App. 148, 656 S.E.2d 264 (2008).

Evidence insufficient for conviction of driving without current license plate. — Testimony by officers that defendant's car had a temporary dealer tag was insufficient to support the charge of driving without a current license plate because the state presented no evidence that the tag on the car was not a valid temporary tag issued by a dealer at the time of sale. *Brackins v. State*, 249 Ga. App. 788, 549 S.E.2d 775 (2001).

Cited in *Undercoffer v. White*, 113 Ga. App. 853, 149 S.E.2d 845 (1966); *Garner v. State*, 154 Ga. App. 839, 269 S.E.2d 912 (1980); *Wilder v. State*, 192 Ga. App. 891, 386 S.E.2d 685 (1989); *Burtts v. State*, 211 Ga. App. 840, 440 S.E.2d 727 (1994).

OPINIONS OF THE ATTORNEY GENERAL

Vehicles registered in another state required to obtain Georgia use permit. — Vehicles traveling in Georgia, registered in another state where the fees imposed are of such a nature as to be considered merely registration fees, should be required to obtain a Georgia highway use permit and identification tags and stickers pertinent thereto. 1954-56 Op. Att'y Gen. p. 477.

Mail order applicant not penalized until April 2, or 15 days after money order issued. — Mail order applicant cannot be subjected to civil penalties until April 2, or until the expiration of 15 days after the date of a proper money order receipt issued on or before April 1, whichever is later. 1958-59 Op. Att'y Gen. p. 209.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 60, 67, 84, 256 et seq. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 196, 282. 61A C.J.S., Motor Vehicles, § 1628 et seq.

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or

motorcycle, or licensing of operator, 16 ALR 1108; 35 ALR 62; 38 ALR 1038; 43 ALR 1153; 54 ALR 374; 58 ALR 532; 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375.

Applicability of motor vehicle regulations to public officials or employees, 23 ALR 418.

Improper use of automobile license plates as affecting liability or right to

recover for injuries, death, or damages in consequence of automobile accident, 99 ALR2d 904.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction

Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 ALR Fed. 2d 237.

40-2-8.1. Operation of vehicle without revalidation decal on license plate.

Notwithstanding Code Section 40-2-8 or any other provision of law, a person who operates a vehicle which is required to be registered in this state and which has attached to the rear thereof a valid numbered license plate without having the required revalidation decal affixed upon that plate, which person is otherwise guilty of a misdemeanor for not having such decal affixed to the plate, shall be subject for that offense only to a fine not to exceed \$25.00 if that person shows to the court having jurisdiction of the offense that the proper revalidation decal had been obtained prior to the time of the offense. (Code 1981, § 40-2-8.1, enacted by Ga. L. 1993, p. 698, § 1.)

JUDICIAL DECISIONS

Cited in Ray v. State, 292 Ga. App. 575, 665 S.E.2d 345 (2008).

40-2-9. Space for county name decal; display of “In God We Trust” decal in lieu of county name decal.

(a) Any special, distinctive, or prestige license plate, except those provided for in Code Sections 40-2-61, 40-2-62, 40-2-74, 40-2-82, and 40-2-85.1 or as otherwise expressly provided in this chapter, shall contain a space for a county name decal. The provisions of this chapter relative to county name decals shall be applicable to all such license plates.

(b) The department shall make available to all license plates recipients a decal with the same dimensions as the county name decal that contains the words, “In God We Trust.” The department shall provide such decal free of charge to any person requesting it. Such decal may be displayed in the space reserved for the county name decal in lieu of the county name decal. (Code 1981, § 40-2-77, enacted by Ga. L. 1985, p. 261, § 8; Ga. L. 1986, p. 1333, § 5; Ga. L. 1989, p. 1186, § 4; Code 1981, § 40-2-81, as redesignated by Ga. L. 1990, p. 2048, § 2; Code 1981, § 40-2-9, as redesignated by Ga. L. 2001, p. 479, § 3; Ga. L. 2008, p. 835, § 1/SB 437; Ga. L. 2010, p. 9, § 1-64/HB 1055; Ga. L. 2010, p. 143, § 2.1/HB 1005; Ga. L. 2012, p. 1070, § 1/SB 293.)

The 2012 amendment, effective July 1, 2012, substituted “provide such decal free of charge to any person requesting it” for “charge to any person requesting such decal no more than the cost to the department for the manufacture and distribution of such decal” in the second sentence of subsection (b). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date.”

40-2-10. Voluntary cancellation of vehicle registration.

A vehicle registrant may voluntarily cancel the registration on a vehicle when such vehicle is not in use for any reason, including without limitation if the vehicle is stolen, repossessed but not redeemed by the registrant, junked, inoperable, in storage, used seasonally for agricultural or other purposes, or if the owner is on active duty in the armed forces of the United States and is transferred to a duty station away from the location of the vehicle or is on active sea duty. A registration that has been voluntarily cancelled may be reinstated upon payment of all accrued ad valorem taxes and license fees, if any. (Code 1981, § 40-2-10, enacted by Ga. L. 2003, p. 261, § 1.)

Law reviews. — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 208 (2003).

40-2-11. Administration of chapter.

(a) The commissioner shall be responsible for the administration of this chapter and may employ such clerical assistants and agents as may be necessary from time to time to enable the commissioner to speedily and efficiently perform the duties conferred on the commissioner in this chapter. The commissioner shall be authorized to delegate any administrative responsibility for retention of applications, certificates of registration, and any other forms or documents relating to the application and registration process to the appropriate authorized tag agent for the county in which the application is made or the registration is issued.

(b) The commissioner shall prescribe and provide suitable forms of applications and all other notices and forms necessary to administer this chapter.

(c) The commissioner may:

(1) Perform any investigation necessary to procure information required to carry out this chapter; and

(2) Adopt and enforce reasonable rules and regulations to administer this chapter. (Code 1981, § 40-2-11, enacted by Ga. L. 2008, p. 835, § 2/SB 437.)

ARTICLE 2

REGISTRATION AND LICENSING GENERALLY

Cross references. — Further provisions regarding motor vehicle registration and licensing, T. 48, C. 10.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770 (26), are included in the annotations for this article.

Constitutionality. — Statutes providing for licensing of motor vehicles are not unconstitutional on grounds that the statutes are an unauthorized tax on personal property to raise funds for public roads or on grounds that the statutes violate pro-

visions that all taxation shall be uniform on the same class of subjects and ad valorem on all property taxed. *Lee v. State*, 163 Ga. 239, 135 S.E. 912 (1926) (decided under former Code 1910, § 1770).

Provisions for license fees do not constitute a property tax. *Lee v. State*, 163 Ga. 239, 135 S.E. 912 (1926) (decided under former Code 1910, § 1770).

40-2-20. Registration and license requirements; extension of registration period; penalties.

(a)(1)(A) Except as provided in subsection (b) of this Code section and subsection (a) of Code Section 40-2-47, every owner of a motor vehicle, including a tractor or motorcycle, and every owner of a trailer shall, during the owner's registration period in each year, register such vehicle as provided in this chapter and obtain a license to operate it for the 12 month period until such person's next registration period.

(B)(i) The purchaser or other transferee owner of every new or used motor vehicle, including tractors and motorcycles, or trailer shall register such vehicle as provided in Code Section 40-2-8 and obtain or transfer as provided in this chapter a license to operate it for the period remaining until such person's next registration period which immediately follows such initial registration period, without regard to whether such next registration period occurs in the same calendar year as the initial registration period or how soon such next registration period follows the initial registration period; provided, however, that this registration and licensing requirement does not apply to a dealer which acquires a new or used motor vehicle and holds it for resale. The commissioner may provide by rule or regulation for one 30 day

extension of such initial registration period which may be granted by the county tag agent if the transferor has not provided such purchaser or other transferee owner with a title to the motor vehicle more than five business days prior to the expiration of such initial registration period. The county tag agent shall grant an extension of the initial registration period when the transferor, purchaser, or transferee can demonstrate by affidavit in a form provided by the commissioner that title has not been provided to the purchaser or transferee due to the failure of a security interest or lienholder to timely release a security interest or lien in accordance with Code Section 40-3-56.

(ii) No person, company, or corporation, including, but not limited to, used motor vehicle dealers and auto auctions, shall sell or transfer a motor vehicle without providing to the purchaser or transferee of such motor vehicle the last certificate of registration on such vehicle at the time of such sale or transfer; provided, however, that in the case of a salvage motor vehicle or a motor vehicle which is stolen but subsequently recovered by the insurance company after payment of a total loss claim, the salvage dealer or insurer, respectively, shall not be required to provide the certificate of registration for such vehicle; and provided, further, that in the case of a repossessed motor vehicle or a court ordered sale or other involuntary transfer, the lienholder or the transferor shall not be required to provide the certificate of registration for such vehicle but shall, prior to the sale of such vehicle, surrender the license plate of such vehicle to the commissioner or the county tag agent by personal delivery or by certified mail or statutory overnight delivery for cancellation.

(2) An application for the registration of a motor vehicle may not be submitted separately from the application for a certificate of title for such motor vehicle, unless a certificate of title has been issued in the owner's name, has been applied for in the owner's name, or the motor vehicle is not required to be titled. An application for a certificate of title for a motor vehicle may be submitted separately from the application for the registration of such motor vehicle.

(b) Subsection (a) of this Code section shall not apply:

(1) To any motor vehicle or trailer owned by the state or any municipality or other political subdivision of this state and used exclusively for governmental functions except to the extent provided by Code Section 40-2-37;

(2) To any tractor or three-wheeled motorcycle used only for agricultural purposes;

(2.1) To any vehicle or equipment used for transporting cargo or containers between and within wharves, storage areas, or terminals

within the facilities of any port under the jurisdiction of the Georgia Ports Authority when such vehicle or equipment is being operated upon any public road not part of The Dwight D. Eisenhower System of Interstate and Defense Highways by the owner thereof or his or her agent within a radius of ten miles of the port facility of origin and accompanied by an escort vehicle equipped with one or more operating amber flashing lights that are visible from a distance of 500 feet;

(3) To any trailer which has no springs and which is being employed in hauling unprocessed farm products to their first market destination;

(4) To any trailer which has no springs, which is pulled from a tongue, and which is used primarily to transport fertilizer to a farm;

(5) To any electric powered personal transportation vehicle;

(6) To any moped; or

(7) To any golf car.

(c) Any person who fails to register a new or used motor vehicle as required in subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$100.00. (Ga. L. 1927, p. 226, § 3; Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 1; Code 1933, § 68-201; Ga. L. 1943, p. 341, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 392, § 2; Ga. L. 1957, p. 590, § 1; Ga. L. 1960, p. 777, § 1; Ga. L. 1966, p. 252, § 1; Ga. L. 1969, p. 266, § 1; Ga. L. 1973, p. 595, § 2; Ga. L. 1973, p. 781, § 1; Ga. L. 1974, p. 414, § 1; Ga. L. 1974, p. 451, § 1; Ga. L. 1978, p. 2241, § 2; Ga. L. 1984, p. 603, § 1; Ga. L. 1984, p. 1329, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 1053, § 2; Ga. L. 1987, p. 949, § 1; Ga. L. 1990, p. 1657, § 3; Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 1260, § 2; Ga. L. 1994, p. 352, § 1; Ga. L. 1995, p. 809, § 2; Ga. L. 1996, p. 1118, § 2; Ga. L. 1997, p. 419, § 4; Ga. L. 1998, p. 1179, § 4; Ga. L. 1999, p. 81, § 40; Ga. L. 1999, p. 784, § 1; Ga. L. 2000, p. 136, § 40; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 1173, § 1-2; Ga. L. 2002, p. 506, § 3; Ga. L. 2002, p. 512, § 4; Ga. L. 2009, p. 449, § 1/SB 128; Ga. L. 2010, p. 143, § 3/HB 1005; Ga. L. 2012, p. 804, § 2/HB 985; Ga. L. 2014, p. 745, § 2/HB 877.)

The 2012 amendment, effective July 1, 2012, in division (a)(1)(B)(i), deleted “to a purchaser or other transferee owner” following “granted by the county tag agent” in the second sentence, and added the last sentence.

The 2014 amendment, effective July 1, 2014, in paragraph (b)(5), substituted “electric powered personal transportation vehicle;” for “motorized cart; or;” added “;

or” at the end of paragraph (b)(6); and added paragraph (b)(7).

Cross references. — Schedule of fees for registration and licensing of motor vehicles, § 40-2-152.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was deleted following “chapter” in the first sentence of subsection (a).

The amendment of this Code section by

Ga. L. 2002, p. 506, § 3, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 512, § 4. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor's notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of

Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2009, p. 449, § 4/SB 128, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to registration and licensing of trailers on and after January 1, 2010.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 329 (1990). For note on the 2002 amendment of this chapter, see 19 Ga. St. U.L. Rev. 281 (2002).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1915, p. 107 are included in the annotations for this Code section.

Motorcycle is subject to this statute. — Motorcycle is subject to the provisions of O.C.G.A. Title 40, motor vehicles and traffic law, in general, and to those of O.C.G.A. § 40-2-20 in particular. *Grange Mut. Cas. Co. v. King*, 174 Ga. App. 716, 331 S.E.2d 41 (1985).

Trail bike ridden on streets. — Trail bike shown to have been ridden on a public street was subject to registration and was excluded from coverage under the homeowner's policy, despite policy language exempting from the exclusion vehicles "not subject to motor vehicle registration because ... used exclusively on the resident premises." *Addison v. Southern Guar. Ins. Co.*, 155 Ga. App. 536, 271 S.E.2d 674 (1980).

Recovery against railroad. — When a person driving a motor truck on a public highway over a railroad crossing is struck by a passenger train and injured, the mere fact that the vehicle has not been registered, a license obtained, and a license fee paid, as required by Ga. L. 1915, p. 107, will not render the person so injured a trespasser, and bar the person's

right of recovery against the railroad company for negligence. *Central of Ga. Ry. v. Moore*, 149 Ga. 581, 101 S.E. 668 (1919) (decided under Ga. L. 1915, p. 107).

Same rule is applicable when a passenger in an automobile is injured by reason of the negligence of a railroad company in failing to keep the railroads crossing in repair. *Hines v. Wilson*, 25 Ga. App. 63, 102 S.E. 646, cert. denied, 25 Ga. App. 840, (1920) (decided under Ga. L. 1915, p. 107).

Accusation making no reference to "owner." — Accusation of violation which makes no reference to the "owner" is not an error. *Cumbie v. State*, 38 Ga. App. 744, 145 S.E. 667 (1928).

Variance between accusation and proof at trial showing trailer operation. — Defendant's conviction of operating a motor vehicle without a tag, O.C.G.A. § 40-2-20, was improper as there was a fatal variance between the accusation and the proof at trial. There was no evidence that the defendant operated a motor vehicle without a license plate; the evidence established the defendant was towing a trailer which did not have a plate displayed. *Younger v. State*, 293 Ga. App. 20, 666 S.E.2d 460 (2008).

Officer's procedure justified. — An officer's refusal to entrust a car sought to

be impounded to the defendant's passenger was justified because the passenger did not have a valid Georgia driver's license in apparent violation of O.C.G.A. § 40-2-20(a). *Lopez v. State*, 286 Ga. App. 873, 650 S.E.2d 430 (2007).

Sentence not unconstitutional. — Defendant's sentence of 12 months confinement to be served on probation following 60 days of confinement, \$1,500 in fines, 100 hours of community service, and a mental health evaluation for obstruction of a law enforcement officer, driving without insurance, and failing to register a

vehicle was within the statutory limits set by O.C.G.A. §§ 16-10-24(b), 40-2-20(c), and 40-6-10(b), and did not shock the conscience. *Smith v. State*, 311 Ga. App. 184, 715 S.E.2d 434 (2011).

Cited in *Bentley v. State*, 70 Ga. App. 494, 28 S.E.2d 658 (1944); *Georgia Pub. Serv. Comm'n v. Jones Transp., Inc.*, 213 Ga. 514, 100 S.E.2d 183 (1957); *Citizens & S. Nat'l Bank v. Georgia Steel, Inc.*, 25 Bankr. 796 (Bankr. M.D. Ga. 1982); *Keyser v. State*, 187 Ga. App. 95, 369 S.E.2d 309 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Motor scooter is a motor vehicle which must be licensed before operation in Georgia. 1954-56 Op. Att'y Gen. p. 485.

Air compressor mounted on wheels which is not self-propelled, but designed so as to be moved from one job to another by pulling the compressor over the public highways of this state attached to some other motor vehicle, has been classified as a trailer and, as such, should have a license. 1958-59 Op. Att'y Gen. p. 211.

Four-wheel tanks and trailers used to haul goods over public highways. — Since neither tanks mounted on four wheels and used to haul anhydrous ammonia (liquid fertilizer) over public highways, nor four-wheel trailers used to haul cotton over public highways to farms, can qualify as a tractor, those items must be registered and have license plates. 1965-66 Op. Att'y Gen. No. 66-149.

Go-cart is a motor vehicle; and the operator of a go-cart must be licensed; the go-cart must be registered, inspected annually, and equipped with headlights, stop lights, and turn signals. 1969 Op. Att'y Gen. No. 69-194 (rendered under former Code 1933, § 68-201, prior to amendment by Ga. L. 1973, p. 781, § 1).

Operation of golf cart upon public road. — Golf cart was a vehicle other than a tractor, not operated upon a track, and propelled by other than muscular power; the golf cart thus fell within the definition of "motor vehicle" set out in former Code 1933, § 68A-101; if the golf cart was to be operated upon a public

road, the operator must comply with all registration requirements. 1972 Op. Att'y Gen. No. U72-78 (see O.C.G.A. § 40-1-1).

Operation of "log grapple loader" upon public road. — "Log grapple loader" is a truck body with a log loading machine mounted on its back, and the only time that the vehicle is used on a highway is in transporting it from one forest to another; if such a vehicle is to be operated on the public highways, it must be registered, licensed, and inspected in accordance with the motor vehicle laws. 1973 Op. Att'y Gen. No. U73-82.

Nonresident student must register vehicle within 30 days. — Nonresident student is required to register a vehicle owned or operated by the student and obtain a license tag within 30 days from the time the student enters the state. 1970 Op. Att'y Gen. No. 70-40.

Owner applying for tag in May not entitled to three-quarter-year rate. — When a vehicle operated during January, February, and March of the current year under an extension granted for use of the previous year's tag is not used in April, but the owner thereof makes application for a tag therefor in May, the owner is not entitled to a three-quarter-year rate. 1952-53 Op. Att'y Gen. p. 470.

Endorsement of delinquent application for tags. — Delinquent application for an automobile tag may be endorsed by the county tag agent, rather than the sheriff. 1954-56 Op. Att'y Gen. p. 469.

Surrender of plates and registrations of salvage vehicles. — Owners

and insurers are required to surrender to the state revenue commissioner the license plates and registrations of vehicles

which become salvage or total loss vehicles. 1997 Op. Att'y Gen. No. 97-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 57 et seq., 110, 113 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 24 et seq., 36, 38, 180, 181, 273 et seq.

ALR. — Chauffeur in general employment of owner as servant for time being of owner, or of borrower of car, 42 ALR 1446.

Registration of automobile as affected by the name used to identify owner, 47 ALR 1103.

Construction and application of statutes requiring "chauffeur's" licenses, 105 ALR 69; 139 ALR 950.

Applicability of motor vehicle registration laws to corporation domiciled in state but having branch trucking bases in other state, 16 ALR2d 1414.

What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 ALR4th 843.

40-2-20.1. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, redesignated

former Code Section 40-2-20.1 as present Code Section 40-2-21.

40-2-21. Registration periods.

(a) As used in this chapter, the term:

(1) "Initial registration period" means the 30 day period immediately following the date of purchase or other acquisition of a new or used motor vehicle, including tractors and motorcycles, or trailer.

(2) "Owner" has the meaning provided by paragraph (39) of Code Section 40-1-1 except that such term shall mean a lessee of a vehicle when the vehicle is operated under a lease agreement.

(1) "Registration period" means:

(A) In all counties except those for which a local Act has been enacted pursuant to this Code section:

(i) For natural persons, the 30 day period ending at midnight on the birthday of the owner whose surname appears first on the certificate of title or other record of ownership; or

(ii) For entities other than natural persons:

(I) The month of January for the owner whose name begins with the letter A or B;

(II) The month of February for the owner whose name begins with the letter C or D;

(III) The month of March for the owner whose name begins with the letter E or F;

(IV) The month of April for the owner whose name begins with the letter G or H;

(V) The month of May for the owner whose name begins with the letter I or J;

(VI) The month of June for the owner whose name begins with the letter K or L;

(VII) The month of July for the owner whose name begins with the letter M or N;

(VIII) The month of August for the owner whose name begins with the letter O or P;

(IX) The month of September for the owner whose name begins with the letter Q or R;

(X) The month of October for the owner whose name begins with the letter S or T;

(XI) The month of November for the owner whose name begins with the letter U, V, or W; and

(XII) The month of December for the owner whose name begins with the letter X, Y, or Z; or

(iii) The provisions of divisions (i) and (ii) of this subparagraph notwithstanding, December 1 through February 15 for vehicles in excess of 26,000 pounds which are not being registered under the International Registration Plan and are owned by natural persons or entities other than natural persons; or

(B) In those counties which are authorized by a local Act enacted pursuant to this Code section to have a four-month staggered registration period:

(i) For natural persons:

(I) The month of January for the owner whose surname appears first on the certificate of title or other record of ownership and whose birthday is in the month of January, February, or March;

(II) The month of February for the owner whose surname appears first on the certificate of title or other record of ownership and whose birthday is in the month of April, May, or June;

(III) The month of March for the owner whose surname appears first on the certificate of title or other record of ownership and whose birthday is in the month of July, August, or September; and

(IV) The month of April for the owner whose surname appears first on the certificate of title or other record of ownership and whose birthday is in the month of October, November, or December; or

(ii) For entities other than natural persons:

(I) The month of January for the owner whose name begins with the letter A, B, C, or D;

(II) The month of February for the owner whose name begins with the letter E, F, G, H, I, J, or K;

(III) The month of March for the owner whose name begins with the letter L, M, N, O, P, Q, or R; and

(IV) The month of April for the owner whose name begins with the letter S, T, U, V, W, X, Y, or Z; or

(iii) The provisions of divisions (i) and (ii) of this subparagraph notwithstanding, December 1 through February 15 for vehicles in excess of 26,000 pounds which are not being registered under the International Registration Plan and are owned by natural persons or entities other than natural persons; or

(C)(i) In those counties which are authorized by a local Act enacted pursuant to this Code section not to have staggered registration periods, January 1 through April 30.

(ii) The provisions of division (i) of this subparagraph notwithstanding, December 1 through February 15 for vehicles in excess of 26,000 pounds which are not being registered under the International Registration Plan and are owned by natural persons or entities other than natural persons.

For purposes of determining the registration period of an owner which is an entity other than a natural person in subparagraphs (A) and (B) of this paragraph, the owner shall be deemed to be the owner whose name appears first on the certificate of title or other record of ownership. Any other provision of this paragraph notwithstanding, registration of vehicles under the International Registration Plan shall be as provided by Code Section 40-2-88, and registration of vehicles under the fleet registration plan shall be as provided by Article 2A of this chapter.

(2) "Vehicle" means every motor vehicle, including a tractor or motorcycle, and every trailer required to be registered and licensed under Code Section 40-2-20.

(b) The owner of every vehicle registered in the previous calendar year shall register and obtain a license to operate such vehicle not later than the last day of the owner's registration period.

(c) The owner of any vehicle registered in the previous calendar year who moves his or her residence from a county which does not have staggered registration to a county which has a four-month or 12 month staggered registration period or who moves his or her residence from a county which has a 12 month staggered registration period to a county which has a four-month staggered registration period or to a county which does not have staggered registration shall register and obtain a license to operate such vehicle prior to the last day of such new registration period or, if such registration period has passed for that year at the time of the change of residence, not later than 30 days following the date of the change of residence.

(d) The transferee owner of a new or used vehicle shall register and obtain or transfer a license to operate such vehicle as provided in subsection (a) of Code Section 40-2-20.

(e) Any local law enacted pursuant to this Code section shall specify either a staggered registration period of four months or a nonstaggered registration period of four months. If such local law is conditioned upon approval in a referendum, the results of such referendum shall be verified to the commissioner.

(f) On and after January 1, 2000, no local Act shall be enacted pursuant to this Code section authorizing a staggered system of motor vehicle registration. This subsection shall not apply to any county in which such a local Act has been enacted prior to January 1, 2000. (Code 1981, § 40-2-20.1, enacted by Ga. L. 1986, p. 1053, § 3; Ga. L. 1987, p. 1, §§ 1, 2; Ga. L. 1988, p. 380, § 1; Code 1981, § 40-2-21, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 3; Ga. L. 1996, p. 1118, § 3; Ga. L. 1997, p. 419, § 5; Ga. L. 1998, p. 1179, § 4A; Ga. L. 1999, p. 667, § 1; Ga. L. 1999, p. 741, § 1; Ga. L. 2000, p. 951, § 3-2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, “the” was substituted for “hte” in division (a)(1)(A)(iii).

Editor’s notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: “Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act.” The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 17, not codified by the General Assembly, provides: “Any local Act enacted pursuant to Code Section 40-2-21 which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act; provided, however, that any local Act enacted in

1996 pursuant to the provisions of Code Section 40-2-21 as enacted by Act No. 385, Ga. L. 1995, which local Act provides for a four-month staggered registration period for a county, shall not be repealed by the provisions of this Act, but the registration period for such county shall be as provided by subparagraph (a)(1)(B) of Code Section 40-2-21 as enacted by this Act and not as provided in such local Act.”

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: “Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem

taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed.”

Law reviews. — For article comment-

ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-22. Application to local tag agents or commissioner.

License plates and revalidation decals shall be issued only upon applications made to the local tag agent or the commissioner in accordance with the terms of this chapter. (Ga. L. 1955, p. 659, § 6; Ga. L. 1957, p. 197, § 4; Ga. L. 1966, p. 508, § 6; Code 1981, § 40-2-21; Code 1981, § 40-2-22, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2010, p. 9, § 1-65/HB 1055.)

OPINIONS OF THE ATTORNEY GENERAL

Dealership registering in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory

prior to selling a vehicle, a vehicle cannot be registered in the county of the residence of the dealership. 1954-56 Op. Att'y Gen. p. 479.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 93.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1745, 1746.

40-2-23. County tax collectors and tax commissioners designated tag agents.

(a) The tax collectors of the various counties of this state and the tax commissioners of those counties in which the duties of the tax collector are performed by a tax commissioner shall be designated as tag agents of the commissioner for the purpose of accepting applications for the registration of vehicles. The commissioner is authorized to promulgate rules and regulations for the purpose of delegating to such tag agents the custodial responsibility for properly receiving, processing, issuing, and storing motor vehicle titles or registrations, or both.

(b) The duties and responsibilities of agents of the commissioner designated under this Code section shall be a part of the official duties and responsibilities of the county tax collectors and tax commissioners. (Ga. L. 1955, p. 659, § 1; Ga. L. 1957, p. 197, § 1; Ga. L. 1965, p. 5, § 1; Ga. L. 1966, p. 508, § 1; Code 1981, § 40-2-22; Code 1981, § 40-2-23, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 1815, § 1; Ga. L. 1997, p. 739, § 1; Ga. L. 2000, p. 951, § 3-3; Ga. L. 2012, p. 257, § 1-1/HB 386.)

The 2012 amendment, effective March 1, 2013, deleted former subsection (b), which read: "The state revenue commissioner is authorized to further designate each such tag agent as a sales tax agent for the purpose of collecting sales and use tax with respect to the casual sale or casual use of a motor vehicle. For purposes of this Code section, 'casual sale' or 'casual use' means the sale of a motor vehicle by a person who is not regularly or systematically engaged in making retail sales of motor vehicles and the first use, consumption, distribution, or storage for use or consumption of such motor vehicle purchased through a casual sale. As personal compensation for services rendered to the Department of Revenue with respect to the collection of such sales and use tax, each such designated tag agent shall be authorized to retain from such collection a fee of \$200.00 per month. In any month in which an insufficient amount of such tax is collected to pay such

fee, the amount of any such unpaid fee may be deferred until such month as sufficient collections are made. Such compensation shall be in addition to any other compensation to which such tax collector or tax commissioner is entitled."; and redesignated former subsection (c) as present subsection (b).

Cross references. — Further provisions regarding designation of tax collectors and tax commissioners as agents for acceptance of applications for registration of motor vehicles, § 48-5-475.

Administrative rules and regulations. — Payment to agent and remittance by agent to state revenue, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, § 560-10-3-.04.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

JUDICIAL DECISIONS

Cited in Laurens County v. Keen, 214 Ga. 32, 102 S.E.2d 697 (1958); Keen v. Lewis, 215 Ga. 166, 109 S.E.2d 764 (1959).

OPINIONS OF THE ATTORNEY GENERAL

Dealership registering in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot be registered in the county of the residence of the dealership. 1954-56 Op. Att'y Gen. p. 479.

Cause of action against applicant where check dishonored. — When a tax commissioner accepts a check as payment for a motor vehicle license plate,

which is not honored by the bank but returned marked "insufficient funds," the commissioner does not have the authority to seize or cancel the license plate which the commissioner issued; the tag agent accepts checks for motor vehicle license fees at the agent's own risk; consequently, the tag agent has a cause of action against the applicant for the amount of the license fee and the possibility of criminal action against the applicant. 1968 Op. Att'y Gen. No. 68-215.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 58 et seq., 71 et seq., 84.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 307 et seq., 314 et seq., 344 et seq.

40-2-24. Bonds of tag agents.

Each tag agent shall give bond conditioned as the commissioner may require, and in such amount as the commissioner may deem necessary and proper, not exceeding \$250,000.00, to protect the state adequately. Such bond shall be executed by a surety corporation licensed to do business in the State of Georgia, as surety, and the premiums shall be paid by the department. The bond shall run to the Governor and his or her successors in office and shall be approved as to conditions, form, and sufficiency by the commissioner. (Ga. L. 1955, p. 645, § 4; Ga. L. 1957, p. 197, § 3; Ga. L. 1966, p. 508, § 5; Code 1981, § 40-2-23; Code 1981, § 40-2-24, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2000, p. 951, § 3-4; Ga. L. 2005, p. 334, § 14-3/HB 501.)

JUDICIAL DECISIONS

Cited in Keen v. Lewis, 215 Ga. 166, 109 S.E.2d 764 (1959); Sanders v. United States Fid. & Guar. Co., 108 Ga. App. 849, 134 S.E.2d 831 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Dealership registering in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot be registered in the county of the resi-

dence of the dealership. 1954-56 Op. Att'y Gen. p. 479.

Revenue commissioner does not pay premium on the bond that is payable to the state under former Code 1933, § 92-4801.1969 Op. Att'y Gen. No. 69-91 (see O.C.G.A. § 48-5-122).

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, § 1 et seq.

40-2-25. Processing by private persons of applications for registration.

(a) The commissioner is authorized and directed to promulgate rules and regulations governing the processing by private persons, in any manner whatsoever, of applications for the registration of vehicles.

(b)(1) The tax commissioner of each county shall be authorized to require any private person processing applications for the registration of vehicles pursuant to subsection (a) of this Code section to give an annual fidelity bond in the amount of \$50,000.00 with good and sufficient surety or sureties licensed to do business in this state payable to, in favor of, and for the protection of either the payee, taxpayer, or the tax commissioner of the county in which such person processes such applications. Such bond shall be posted prior to the

beginning of business operations each year and satisfactory proof of such bond shall be filed in the office of the tax commissioner requiring such bond prior to the beginning of business operations each year.

(2) Any person who violates any provision of paragraph (1) of this subsection shall be guilty of a misdemeanor. (Ga. L. 1977, p. 697, § 1; Code 1981, § 40-2-24; Ga. L. 1988, p. 892, § 1; Ga. L. 1989, p. 1403, § 1; Code 1981, § 40-2-25, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2002, p. 838, § 1.)

Administrative rules and regulations. — Tag Service Companies, Official Compilation of the Rules and Regulations

of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 17, 21 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 273 et seq.

40-2-25.1. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, redesignated

former Code Section 40-2-25.1 as present Code Section 40-2-27.

40-2-26. Form and contents of application for registration; heavy vehicle tax.

(a) All applicants to register a vehicle shall apply to the tag agent of the county wherein such vehicle is required to be returned for ad valorem taxation.

(b) Application shall be made by the owner of the vehicle upon blanks prepared by the commissioner for such purposes. The application shall contain a statement of the name, place of residence, and address of the applicant; a brief description of the vehicle to be registered, including its name and model, the name of the manufacturer, the manufacturer's vehicle identification number, and its shipping weight and carrying capacity; from whom, where, and when the vehicle was purchased; the total amount of all liens, if any, thereon, with the name and address of the lienholder; and such other information as the commissioner may require. In addition, the commissioner shall provide to an applicant an opportunity to designate an alternative emergency contact telephone number that shall be made available to a law enforcement officer making a vehicle tag inquiry in the course of conducting official law enforcement business.

(c)(1) As used in this subsection, the term "heavy vehicle tax" means that tax imposed by Subchapter D of Chapter 36 of the Internal Revenue Code.

(2) On or after September 30, 1984, no vehicle registration or renewal thereof shall be issued to any motor vehicle subject to the heavy vehicle tax unless the owner of the motor vehicle provides satisfactory proof that the heavy vehicle tax has been paid for the federal tax year during which the application for registration or renewal thereof is made or that a heavy motor vehicle tax return has been filed with the United States Internal Revenue Service for the federal tax year during which the application for registration or renewal thereof is made.

(3) The commissioner is authorized to promulgate rules and regulations consistent with paragraph (2) of this subsection which are necessary to ensure that the state complies with the requirements of the Surface Transportation Assistance Act of 1982, Section 143, 23 U.S.C. Section 141d.

(4) The requirements of this subsection are in addition to any requirements of this Code relative to the registration of motor vehicles.

(d)(1) As used in this subsection, for the purpose of issuing or renewing motor vehicle registration, the term "satisfactory proof" means:

(A) Any type of proof that is satisfactory or sufficient proof of the owner's insurance coverage under subsection (a) of Code Section 40-6-10;

(B) Information obtained from the records or data base of the department regarding the owner's insurance coverage which information is derived from notice provided to the department pursuant to Code Section 40-2-137; or

(C) Such other type of proof of the owner's insurance coverage as may be approved for purposes of this Code section by rule or regulation of the department.

(2) No vehicle registration or renewal thereof shall be issued to any motor vehicle unless the tag agent receives satisfactory proof that the motor vehicle is subject to a policy of insurance that provides the minimum motor vehicle insurance coverage required by Chapter 34 of Title 33 or an approved self-insurance plan and, in the case of a private passenger vehicle, that such coverage was initially issued for a minimum term of six months; provided, however, that the owner's inability to register or renew the registration of any motor vehicle due to lack of proof of insurance shall not excuse or defer the timely payment of ad valorem taxes due and payable upon said vehicle. (Ga. L. 1927, p. 226, § 3; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-202; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 1; Ga. L. 1957, p. 452, § 1; Ga. L.

1966, p. 508, § 3; Code 1981, § 40-2-25; Ga. L. 1984, p. 609, § 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 191, § 9; Code 1981, § 40-2-26, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2002, p. 1024, § 2; Ga. L. 2003, p. 261, § 2; Ga. L. 2010, p. 143, § 3.1/HB 1005; Ga. L. 2014, p. 704, § 4/SB 23.)

The 2014 amendment, effective January 1, 2014, added the last sentence to subsection (b).

Editor's notes. — Ga. L. 1984, p. 609, § 1, not codified by the General Assembly, provides: "The General Assembly declares that it is the purpose of this Act to ensure that this state receives its full apportionment of federal-aid highway funds and to enable the state revenue commissioner and his officers, agents, and employees to comply with the requirements of the federal government in order for this state to receive all possible federal aid and assistance in the construction and maintenance of the public roads of Georgia."

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, interest liabilities, and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of

1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as those statutes become effective for federal purposes.

Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose."

Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

U.S. Code. — Subchapter D of Chapter 36 of the Internal Revenue Code, referred to in paragraph (c)(1), is codified at 26 U.S.C. § 4481 et seq.

Administrative rules and regulations. — Tag Forms, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-19.

JUDICIAL DECISIONS

Effect of purchase site for voting purposes. — Purchase by a Georgia resident of an automobile tag in a Georgia county other than the county in which the resident sought to register to vote was a declaration of residence in that particular county of the state for purposes of former Code 1933, § 34-602. *McCoy v. McLeroy*, 348 F. Supp. 1034 (M.D. Ga. 1972).

Cited in Georgia Pub. Serv. Comm'n v. Jones Transp., Inc., 213 Ga. 514, 100 S.E.2d 183 (1957); *Laurens County v. Keen*, 214 Ga. 32, 102 S.E.2d 697 (1958); *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959); *Cain v. Lumpkin County*, 229 Ga. 274, 190 S.E.2d 910 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Determination of nonresidency of service person. — Local officers determine what is sufficient to show the non-residency of a service person, keeping in mind the only question involved is one of residency. 1967 Op. Att'y Gen. No. 67-2.

Dealership registering in county of dealership's residence. — Unless a

dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot be registered in the county of the residence of the dealership. 1954-56 Op. Att'y Gen. p. 479.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 71 et seq., 94, 100.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 273, 294.

40-2-27. Registration of motor vehicles not manufactured to comply with federal emission and safety standards applicable to new motor vehicles; certificate of title; former military motor vehicles.

(a) No application shall be accepted and no certificate of registration shall be issued to any motor vehicle which was not manufactured to comply with applicable federal emission standards issued pursuant to 42 U.S.C.A. Section 7401 through Section 7642, known as the Clean Air Act, as amended, and applicable federal motor vehicle safety standards issued pursuant to 49 U.S.C.A. Section 30101, et seq., unless and until the United States Customs Service or the United States Department of Transportation has certified that the motor vehicle complies with such applicable federal standards and unless all documents required by the commissioner for processing an application for a certificate of registration or title are printed and filled out in the English language or are accompanied by an English translation.

(b) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of registration for such motor vehicles that have a manufactured date that is 25 years or older at the time of application. Certification of compliance shall only be required at the time of application for the issuance of the initial Georgia certificate of registration.

(c) Applications for registration of such motor vehicles shall be accompanied by a Georgia certificate of title, proof that an application for a Georgia certificate of title has been properly submitted, or such other information and documentation of ownership as the commissioner shall deem proper.

(d) Before a certificate of registration is issued for an assembled motor vehicle or motorcycle, such assembled motor vehicle or motorcy-

cle shall have been issued a certificate of title in Georgia and shall comply with the provisions of Code Section 40-3-30.1.

(e) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of registration for former military motor vehicles that are less than 25 years old and manufactured for the United States military. (Code 1981, § 40-2-25.1, enacted by Ga. L. 1985, p. 693, § 1; Code 1981, § 40-2-27, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 3-5; Ga. L. 2002, p. 512, § 5; Ga. L. 2002, p. 1378, § 2; Ga. L. 2008, p. 835, § 3/SB 437; Ga. L. 2014, p. 409, § 2/SB 392.)

The 2014 amendment, effective July 1, 2014, in subsection (b), substituted “not apply to applications for certificates of registration for such motor vehicles that have a manufactured date that is 25 years

or older at the time of application” for “only apply to applications for certificates of registration for such motor vehicles first registered in Georgia after July 1, 1985”; and added subsection (e).

JUDICIAL DECISIONS

O.C.G.A. § 40-2-27 violates the preemption clause of the federal Clean Air Act, 42 U.S.C. § 7543(a), but does not preempt 15 U.S.C. § 1392(d) of the National Traffic and Motor Vehicle Safety

Act, does not violate the Commerce Clause and is not unconstitutionally vague. *Georgia Auto. Importers Compliance Ass’n v. Bowers*, 639 F. Supp. 352 (N.D. Ga. 1986).

40-2-28. Proof of ownership.

(a) Initial applications for registration shall contain such information of ownership as the commissioner shall deem proper, and no vehicle shall be registered unless the commissioner shall be satisfied that the applicant for registration is entitled to have the vehicle registered in his name. Proof of purchase at a judicial sale or previous registration in this state by the applicant may be accepted as evidence of ownership by the commissioner.

(b) Applications for registration of vehicles brought into this state and previously registered in other states shall be accompanied by an affidavit from the motor vehicle registering official of that state, or other satisfactory evidence indicating that the applicant is the lawful owner of the vehicle, including the date, name, and address of the person from whom it was purchased. (Ga. L. 1925, p. 315, § 1; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-205; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 2; Ga. L. 1955, p. 424, § 1; Ga. L. 1973, p. 455, § 1; Code 1981, § 40-2-26; Code 1981, § 40-2-28, as redesignated by Ga. L. 1990, p. 2048, § 2.)

Law reviews. — For comment on *S.E.2d 610* (1949), see 1 *Mercer L. Rev.* Blalock v. Brown, 78 *Ga. App.* 537, 51 128 (1949).

JUDICIAL DECISIONS

Innocent purchaser for value. — In a prosecution for felony theft by taking of a van, the trial court was entitled to conclude that the victim was an innocent purchaser for value, believing the seller to be the owner, the defendant's claim to the

contrary notwithstanding; moreover, pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the testimony of a single witness was sufficient to establish this fact. *Coursey v. State*, 281 Ga. App. 494, 636 S.E.2d 669 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Refusal to issue plates when ownership not proven. — Commissioner of revenue may refuse to issue plates to applicants who cannot submit satisfactory proof of ownership. 1952-53 Op. Att'y Gen. p. 224.

Nonresident entitled to tag upon

proof of ownership. — Nonresident who sufficiently establishes ownership of vehicle is entitled to be issued license tag therefor, notwithstanding the fact that the nonresident may not use or intend to use the vehicle in Georgia. 1952-53 Op. Att'y Gen. p. 465.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 93 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 180, 273, 282.

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle or licensing of operator, 111 ALR 1258; 163 ALR 1375.

Right to inspect motor vehicle records, 84 ALR2d 1261.

Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 ALR3d 739.

40-2-29. Registration and license plate requirement; license fee to accompany application; temporary operating permit; penalties.

(a) Except as otherwise provided in this chapter, any person purchasing or acquiring a vehicle shall register and obtain, or transfer, a license plate to operate such vehicle from the county tag agent in their county of residence no later than seven business days after the date of purchase or acquisition of the vehicle by presenting to the county tag agent the following:

(1) A motor vehicle certificate of title as provided in Chapter 3 of this title;

(2) Satisfactory proof of owner's insurance coverage as provided for in subsection (d) of Code Section 40-2-26;

(3) If applicable, satisfactory proof of compliance with the Article 2 of Chapter 9 of Title 12, the "Georgia Motor Vehicle Emission Inspection and Maintenance Act"; and

(4) Satisfactory proof that all fees, permits, and taxes have been paid.

(b) An application for registration shall be accompanied by check; cash; certified or cashier's check; bank, postal, or express money order; or other similar bankable paper for the amount of the license plate or temporary permit fee or any taxes required by law.

(c) A person unable to fully comply with the requirements of subsection (a) of this Code section shall register such vehicle and receive a temporary operating permit that will be valid until the end of the initial registration period as provided for in paragraph (.1) of subsection (a) of Code Section 40-2-21.

(d) A conviction for displaying a license plate or temporary license plate not provided for in this chapter shall be punished as a misdemeanor. (Ga. L. 1925, p. 315, § 1; Ga. L. 1927, p. 226, § 6; Ga. L. 1931, p. 7, § 84; Code 1933, §§ 68-208, 68-212; Ga. L. 1960, p. 943, § 1; Code 1981, § 40-2-27; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 537, § 2; Code 1981, § 40-2-29, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2010, p. 143, § 4/HB 1005; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "provided for in paragraph (.1)" for "pro-

vided for in paragraph (1)" near the end of subsection (c).

Cross references. — Schedule of annual license fees, § 40-2-151.

OPINIONS OF THE ATTORNEY GENERAL

"Or other similar bankable paper" construed. — Words "or other similar bankable paper," found in former Code 1933, §§ 68-208 and 68-212 (see O.C.G.A. § 40-2-29), include personal and company checks, as provided in Ga. L. 1960, p. 211 (see O.C.G.A. § 48-2-32). 1963-65 Op. Att'y Gen. p. 607.

Post-dated, nonpar, and qualified checks prohibited. — Words "free of any expense to the state" found in former Code 1933, § 92-5706 (see O.C.G.A. § 48-2-31) restrict the term "bankable paper" found in former Code 1933, §§ 68-208 and 68-212 (see O.C.G.A. § 40-2-29) in that this provision would prohibit accepting post-dated checks, checks drawn on nonpar banks, and any check which was

so qualified or conditioned that an expense to the state would necessarily be incurred. 1963-65 Op. Att'y Gen. p. 607.

Old tag valid only for 15 days from date of remittance. — Mailing application prior to April 1 cannot authorize car's operation without tag until April 15 because the old tag is valid only for "a period of 15 days from the date of such remittance" — not for such a period after April 1. 1970 Op. Att'y Gen. No. U70-70.

When mail order applicant penalized. — Mail order applicant cannot be subjected to civil penalties until April 2, or until the expiration of 15 days after the date of a proper money order receipt issued on or before April 1, whichever is later. 1958-59 Op. Att'y Gen. p. 209.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 60, 72 et seq. **C.J.S.** — 60 C.J.S., Motor Vehicles, § 144 et seq.

40-2-29.21. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, redesignated former Code Section 40-2-29.21 as former Code Section 40-2-32.

40-2-30. Purchase by mail.

An applicant may purchase a vehicle license plate or revalidation decal by mail, by mailing a properly completed application form to the tag agent of the county of his or her residence along with a bank check or money order in the amount of the license fee and all ad valorem taxes due thereon plus an additional fee of \$1.00. (Ga. L. 1957, p. 454, § 1; Ga. L. 1966, p. 508, § 4; Ga. L. 1968, p. 1386, § 1; Code 1981, § 40-2-28; Ga. L. 1982, p. 964, § 1; Ga. L. 1987, p. 655, § 1; Code 1981, § 40-2-30, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2010, p. 9, § 1-66/HB 1055.)

Cross references. — Schedule of annual license fees, § 40-2-151.

OPINIONS OF THE ATTORNEY GENERAL

Effect of remittance of proper fee. — Money order receipt, or similar evidence, showing a remittance to a county tag agent or to the state revenue commissioner for the proper fee entitles an applicant to the use and operation of the motor vehicle sought to be licensed and registered for a period of 15 days from the date of such remittance without penalty of any kind, assuming, of course, that the date of such remittance is on or before April 1, 1958-59 Op. Att'y Gen. p. 209.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 60. **C.J.S.** — 60 C.J.S., Motor Vehicles, § 282.

40-2-31. Five-year and annual license plates; design; costs of manufacture and delivery retained from registration fees; revalidation and county decals; "In God We Trust" decals.

(a) If the applicant meets the requirements set forth in this chapter, the commissioner shall issue to the applicant a license plate bearing a distinctive number.

(b) Such license plates shall be at least six inches wide and not less than 12 inches in length, except motorcycle license plates which shall be

at least four inches wide and not less than seven inches in length, and shall show in boldface characters the month and year of expiration, the serial number, and either the full name or the abbreviation of the name of the state, shall designate the county from which the license plate was issued unless specifically stated otherwise in this chapter, and shall show such other distinctive markings as in the judgment of the commissioner may be deemed advisable, so as to indicate the class of weight of the vehicle for which the license plate was issued; and any license plate for a low-speed vehicle shall designate the vehicle as such. Such plates may also bear such figures, characters, letters, or combinations thereof as in the judgment of the commissioner will to the best advantage advertise, popularize, and otherwise promote Georgia as the "Peach State." The license plate shall be of such strength and quality that the plate shall provide a minimum service period of at least five years. The commissioner shall adopt rules and regulations, pursuant to the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the design and issuance of new license plates and to implement the other provisions of this Code section.

(b.1) Notwithstanding the provisions of Code Sections 40-2-131 and 48-2-17, the commissioner shall retain the costs of manufacturing and delivery of license plates, revalidation decals, and county name decals from the registration fee as set forth in Code Section 40-2-151.

(c) The face of the license plate to be displayed shall be treated completely with a retroreflective material which will increase the nighttime visibility and legibility of the plate. The department shall prepare the specifications which such retroreflective material shall meet.

(d) In those years in which a new license plate is not issued, a revalidation decal with a distinctive serial number shall be issued and affixed in the space provided on the license plate issued to the applicant which shall indicate the year and month through which the registration of the vehicle shall be valid; provided, however, that if the commissioner determines that it is necessary, two revalidation decals shall be issued for each license plate to reflect the required information. When an applicant is issued a revalidation decal and such applicant registered the vehicle in another county the previous year, the applicant shall also be issued a new county decal which shall be properly affixed to the license plate and shall replace the other county decal.

(e) The commissioner shall furnish without cost to each tag agent reflective adhesive decals in sufficient number, upon which there shall be printed the name of the agent's county. Such a decal shall be issued with each metal license plate and shall be affixed in the space provided on the license plate without obscuring any number or other information required to be present on the plate. A tag agent shall offer, upon such

issuance of a new permanent license plate, the option of obtaining a county decal or a decal providing for the nation's motto, "In God We Trust."

(f) A county tag agent shall issue a county name decal, upon request, for the agent's county only if:

(1) The applicant is a resident of or a business located in the county named on the decal;

(2) The applicant is registering a new vehicle in such county, is renewing a current vehicle registration, or is transferring registration of a vehicle to the county named on the decal; and

(3) The application for registration of the vehicle is being made in the county named on the decal.

(g) The commissioner shall furnish without cost to each tag agent reflective adhesive decals in sufficient number, upon which there shall be printed the nation's motto, "In God We Trust." A tag agent shall offer, upon such issuance of a new permanent license plate, the option of obtaining a county decal or a decal providing for the nation's motto, "In God We Trust." Such a decal shall be issued, upon request and free of charge, by a county tag agent with each new permanent license plate. (Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-214; Ga. L. 1939, p. 182, § 2; Ga. L. 1943, p. 341, § 3; Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 1, § 1; Ga. L. 1955, p. 659, § 7C; Ga. L. 1969, p. 266, §§ 2, 3; Ga. L. 1979, p. 615, § 1; Ga. L. 1981, p. 714, §§ 1, 2; Code 1981, § 40-2-29; Ga. L. 1982, p. 1584, §§ 2A, 5A; Ga. L. 1986, p. 1333, § 1; Ga. L. 1987, p. 949, § 2; Ga. L. 1988, p. 380, § 3; Code 1981, § 40-2-31, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 4; Ga. L. 1996, p. 1118, § 4; Ga. L. 1997, p. 419, § 6; Ga. L. 2001, p. 4, § 40; Ga. L. 2002, p. 512, § 6; Ga. L. 2006, p. 434, § 1/HB 363; Ga. L. 2010, p. 9, § 1-67/HB 1055; Ga. L. 2012, p. 1070, § 2/SB 293.)

The 2012 amendment, effective July 1, 2012, added the last sentence of subsection (e); inserted "upon request," in the introductory language of subsection (f); and added subsection (g). See editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, a period was deleted at the beginning of subsection (b.1).

Editor's notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date

of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, pro-

vides: "This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date."

Law reviews. — For article comment-

ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Evidence obtained from search after legal stop. — When any one of the traffic violations observed by a police officer would have provided probable cause to effectuate a traffic stop, the trial court's denial of a motion to suppress evidence found during a subsequent search of the defendant's person, based upon an alleg-

edly improper traffic stop, was not clearly erroneous. *Tukes v. State*, 236 Ga. App. 77, 511 S.E.2d 534 (1999).

Cited in *Undercofler v. White*, 113 Ga. App. 853, 149 S.E.2d 845 (1966); *Garner v. State*, 154 Ga. App. 839, 269 S.E.2d 912 (1980).

OPINIONS OF THE ATTORNEY GENERAL

All classes and types of plates should be seven-year plates. — All classes and types of motor vehicle license plates issued, except those issued to motor vehicles in excess of 24,000 pounds, should be five-year (now seven-year) license plates. 1970 Op. Att'y Gen. No. 70-195.

Legislative intent as to treatment of plate surface. — Legislature intended, and provided for, the treatment of the entire surface of the plate, not a limitation of the treatment to the numerals and/or embossments appearing on the face of the plate. 1969 Op. Att'y Gen. No. 69-345.

Department of Corrections not required to manufacture stickers. —

Former Code 1933, § 68-214 did not expressly require the Department of Offender Rehabilitation (now Department of Corrections) to undertake the manufacture of revalidation stickers and county-designation stickers. 1969 Op. Att'y Gen. No. 69-435 (see O.C.G.A. § 40-2-31).

Revalidation stickers must be of reflective material. 1969 Op. Att'y Gen. No. 69-461.

Responsibility of owner as to county decals. — Vehicle owner has mandatory responsibility to affix county name decal to plates in space provided. 1971 Op. Att'y Gen. No. U71-21.

40-2-32. Commemoration of college or university.

Reserved. Repealed by Ga. L. 2010, p. 9, § 1-74/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Code 1981, § 40-2-29.21, enacted by Ga. L. 1987, p. 658, § 1A; Ga. L. 1989, p. 921, § 1; Code 1981, § 40-2-32,

as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 1; Ga. L. 1997, p. 419, § 7.

40-2-32.1. Commemorative license plates for Georgia organizations; promotional agreements; fees.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section 1998, p. 1179, § 5; Ga. L. 2006, p. 1094, was based on Code 1981, § 40-2-32.1, enacted by Ga. L. 1997, p. 739, § 2; Ga. L. § 1/HB 1053.

40-2-33. Issuance of license plates; payment and disposition of fees; compensation of tag agents; required identification.

(a)(1) Upon compliance with the provisions of this chapter and the payment of the license fee required by law, the tag agent shall accept the application for registration and, except as otherwise provided for in this chapter, if the license plate or revalidation decal applied for is in such tag agent's inventory, he shall issue the appropriate plate or revalidation decal.

(2) The commissioner may provide for the issuance of a temporary license plate for any low-speed vehicle, to be displayed until such time as a license plate of the design required by Code Section 40-2-31 has been issued to the registrant as a replacement for such temporary license plate; provided, however, that any such temporary license plate shall designate the low-speed vehicle as such; and provided, further, that the commissioner shall make available for issuance low-speed vehicle license plates of the design required by Code Section 40-2-31 not later than September 1, 2002.

(3) If the license plate applied for is not in inventory, the application shall be approved and forwarded to the commissioner, who, upon receipt of a proper and approved application, shall issue the license plate applied for by mailing or delivering the plate to the applicant. Until the license plate is received by the applicant from the commissioner, the applicant may operate the vehicle without a license plate therefor upon the receipt issued to him by the tag agent.

(b) Except as provided for in Code Section 40-2-22, the amount of commission permitted as compensation to tag agents under this Code section shall be \$1.00 per license plate or revalidation decal issued during any calendar year. Twenty-five cents for each license plate or revalidation decal sold in excess of 4,000 during any one calendar year shall become the property of the county and shall be turned over to the fiscal authorities of the county by the tag agent. The remaining portion of such commissions shall be disposed of as provided in Code Section 40-2-34.

(c)(1) Any other provisions of any law of this state, whether general, special, or local, to the contrary notwithstanding, and except as provided in subsection (b) of this Code section and paragraph (2) of this subsection, the fees prescribed in subsection (b) of this Code section shall be retained by the tag agent appointed by the commis-

sioner under this chapter and shall be his or her own personal compensation for the services rendered in the administration of this chapter, regardless of whether such agent may otherwise be an elected or appointed official of the county, and regardless of whether as such county officer he or she is compensated for the performance of the duties of such office on a fee basis or salary basis, or combination thereof. It shall be his or her duty, however, as agent for the commissioner in the administration of the purposes of this chapter, to compensate any additional personnel which may be necessary to enable said agent to effectuate the provisions of this chapter and the rules and regulations promulgated under this chapter by the commissioner.

(2) If such tag agent shall be a salaried employee of the county and at a salary in excess of \$7,999.00 per annum, the amount of such fees so collected shall go into the general treasury of the county. In such cases, it shall be the duty of the governing authorities of the county to furnish to the tag agent such additional clerical help as is necessary to carry out the provisions of this chapter.

(d) The initial issuance of any tag, on or after July 1, 2007, shall not be made unless the applicant presents at the time of application a valid Georgia driver's license or Georgia identification card. This subsection shall not apply to those applicants expressly exempted in Code Section 40-5-21. (Ga. L. 1955, p. 659, § 3; Ga. L. 1957, p. 197, § 2; Ga. L. 1966, p. 508, § 3; Ga. L. 1970, p. 728, § 1; Code 1981, § 40-2-30; Ga. L. 1982, p. 3, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 377, § 1; Ga. L. 1989, p. 857, § 1; Ga. L. 1990, p. 159, § 1; Code 1981, § 40-2-33, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 2; Ga. L. 1997, p. 419, § 8; Ga. L. 2000, p. 951, § 3-6; Ga. L. 2002, p. 512, § 7; Ga. L. 2007, p. 531, § 1/SB 38; Ga. L. 2010, p. 9, § 1-68/HB 1055.)

Cross references. — Schedule of annual license fees, § 40-2-151. Minimum salaries of tax collectors and tax commissioners, § 48-5-183.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Compensation of county tax commissioner. — There is no conflict between Ga. Const. 1983, Art. IX, Sec. I, Para. III authorizing compensation for tax commissioners based on fees, salaries, or a combination thereof, and O.C.G.A. § 40-2-33(c)(2) which simply constitutes a statutory exception to those fees which otherwise may comprise the compensation paid to a county tax commissioner.

Weldon v. Board of Comm'rs, 212 Ga. App. 885, 443 S.E.2d 513 (1994).

O.C.G.A. § 48-5-183 controlled over a local act upon which a tax commissioner relied when, for during the commissioner's entire tenure, the commissioner's minimum salary under that section was higher than that provided in the local act, as well as higher than the maximum salary permitted in order to receive fees

pursuant to O.C.G.A. §§ 40-2-33 and 48-5-180. *Brown v. Liberty County*, 271 Ga. 634, 522 S.E.2d 466 (1999).

Salary in excess of \$7,999.00. — Tax commissioner is entitled to an incentive commission for selling license tags as long as the commissioner's salary is less than \$7,999.00. *Belcher v. Sumter County*, 145 Ga. App. 173, 243 S.E.2d 110 (1978).

Limitation of O.C.G.A. § 40-2-33(c)(2) necessarily applies to county officers, such as county tax commissioners, since every

tag agent is either a tax collector or a tax commissioner and, thus, a county officer. *Brown v. Liberty County*, 271 Ga. 634, 522 S.E.2d 466 (1999).

Cited in *Laurens County v. Keen*, 214 Ga. 32, 102 S.E.2d 697 (1958); *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959); *Cain v. Lumpkin County*, 229 Ga. 274, 190 S.E.2d 910 (1972); *Mobley v. Board of Comm'rs*, 252 Ga. 33, 311 S.E.2d 178 (1984); *Montgomery County v. Sharpe*, 261 Ga. App. 389, 582 S.E.2d 545 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Salary in excess of \$7,999.00. — \$7,999.00 per year is not entitled to claim Commissioner salaried in excess of tag fees. 1973 Op. Att'y Gen. No. U73-6.

40-2-34. Reports and remittances by tag agents.

(a) All county tag agents accepting license applications shall endeavor to submit to the commissioner on at least a weekly basis reports of license applications handled and remit with such reports related sums of money to which the state is entitled. All tag reports of license applications handled and related sums of money to which the state is entitled must be submitted to the commissioner within seven calendar days from the close of the business week during which the aforementioned license applications were handled and related sums of money received. The term "business week" shall mean Monday through Friday (or Saturday if applicable).

(b) Funds received as a result of the handling of license applications shall be considered trust funds in the hands of such tag agents until such time as paid over to the commissioner.

(c) Failure to submit the reports or remit the funds within the period required by this Code section shall result in the penalties imposed by Code Section 48-2-44.

(d) Before the expiration of the time period within which a tag report is required to be filed with the commissioner or related funds remitted to the commissioner, application may be made to the commissioner for an extension. The commissioner shall be authorized, upon a showing of justifiable cause, to grant up to a 30 day extension from the deadline provided for the performance of the above duties. Only one such extension may be granted with regard to any reports or funds due the commissioner for a specific business week.

(e) Proof of mailing within the appropriate time periods provided for in this Code section, as evidenced by a United States Postal Service postmark, shall be prima-facie proof that the county tag agent has

complied in a timely manner with the duties enumerated by this Code section.

(f) All funds derived from motor vehicle registrations or the sale of any license plates and remitted to the state shall be deposited in the general fund of the state treasury unless otherwise specifically authorized by the Constitution and provided for in this chapter. (Ga. L. 1980, p. 1050, § 2; Code 1981, § 40-2-31; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-34, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 5; Ga. L. 2000, p. 951, § 3-7; Ga. L. 2001, p. 1173, §§ 2-1, 3-1; Ga. L. 2006, p. 1094, § 2/HB 1053.)

Editor's notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 2001, p. 1173, effective January 1, 2002, amended this Code section twice so as to specifically apply that amendment to those versions of this Code section in effect both before and after the amendment made to this Code section by Ga. L. 2000, p. 951, becomes effective.

Ga. L. 2006, p. 1094, § 13/HB 1053, not

codified by the General Assembly, provides that the 2006 amendment becomes effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

Administrative rules and regulations. — County Tag Agent's Reports, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-4.

40-2-35. Commissioner to have license plates by December 1.

The commissioner shall have in his possession on or before December 1 of each year, for distribution, the license plates and revalidation decals provided for in this chapter. (Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 3; Code 1933, § 68-209; Code 1981, § 40-2-32; Code 1981, § 40-2-35, as redesignated by Ga. L. 1990, p. 2048, § 2.)

40-2-36. Commissioner to furnish license plates to tag agents; inventories and affidavits of missing plates; sale of plates for vehicles weighing more than 26,000 pounds.

(a) The commissioner shall furnish to each tag agent such number of motor vehicle license plates, revalidation decals, and decals as he may deem necessary for issuance by such agent, together with such forms and other supplies as are necessary to enable such agent to perform the duties required of him by this chapter.

(b) The county tag agent shall, immediately upon receipt of the motor vehicle license plates from the commissioner, take a full and complete inventory of the arriving shipment of license plates for motor

vehicles over 26,000 pounds. The affidavit of lost or missing plates which the county tag agents are required to file with the commissioner shall be filed within ten days of the county tag agents' receipt of the license plates for motor vehicles over 26,000 pounds in weight. Failure to submit the required affidavit within ten days shall result in a denial of credit for any lost or missing license plates and the receiving county shall be responsible for full payment of said license plates.

(c) The county is responsible for providing a secure storage area for all license plates and revalidation decals.

(d) Notwithstanding any other provision of law, should a county desire to maintain an inventory of license plates for vehicles weighing in excess of 26,000 pounds and sell said license plates for vehicles weighing in excess of 26,000 pounds, the county shall first request permission in writing from the commissioner. Permission shall be granted at the discretion of the commissioner and, once granted, the permission may be revoked should the county fail to file tag and title reports with the commissioner in a timely and proper manner and fail to remit to the commissioner in a timely manner sums of money collected.

(e) The commissioner shall prescribe such reasonable rules and regulations as in his discretion may be necessary to effectuate the purposes of this Code section. (Ga. L. 1955, p. 659, § 2; Ga. L. 1966, p. 508, § 2; Ga. L. 1980, p. 1050, § 1; Code 1981, § 40-2-33; Ga. L. 1990, p. 1883, § 1; Code 1981, § 40-2-36, as redesignated by Ga. L. 1990, p. 2048, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Dealership registration in county of dealership's residence. — Unless a dealership wishes to obtain separate regular license plates for each vehicle obtained by the dealership from the factory prior to selling a vehicle, a vehicle cannot

be registered in the county of the residence of the dealership. 1954-56 Op. Att'y Gen. p. 479.

Cost of motor vehicle license plates is an expense of the Department of Revenue. 1969 Op. Att'y Gen. No. 69-461.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 67.

40-2-36.1. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, redesignated former Code Section 40-2-36.1 as present Code Section 40-2-39.

40-2-37. Registration and licensing of vehicles of state and political subdivisions.

(a) All vehicles of the type required to be registered by Code Section 40-2-20 owned by the State of Georgia or any municipality or other political subdivision of this state and used exclusively for governmental functions, except those employed in secret investigatory police functions to which regular Georgia license plates are issued, and except for those assigned for the transportation of employees of the Georgia Lottery Corporation to which regular Georgia license plates are issued, shall be registered with the commissioner by the fiscal officers or other proper officials of the respective departments and agencies of the state, municipality, or political subdivision to which such vehicles belong prior to operation and use thereof. Such registration shall be made upon forms prescribed and prepared by the commissioner for such purpose and shall contain a brief description of the vehicle to be registered; its name and model; the name of the manufacturer; the manufacturer's vehicle identification number; the department, agency, political subdivision, or branch thereof to which such vehicle is to be registered; and such other information as to use and identity as the commissioner may require. Upon the filing of the properly executed application for registration, the commissioner, upon being satisfied that such vehicle is bona fide owned by the state or a municipality or political subdivision thereof and is to be used exclusively for governmental functions, shall issue, upon payment by such applicant of a license fee of \$3.00, a license plate which shall be displayed upon such vehicle in the same manner as provided for private vehicles. The license fee, less the actual manufacturing cost of the plates which will be retained by the department, shall be deposited in the general fund of the state treasury. Such license plates shall be replaced at such time as other license plates issued for private vehicles are required to be replaced.

(b) For all vehicles owned by the State of Georgia or any municipality or other political subdivision of this state, except those vehicles employed in covert or secret investigatory police functions to which regular Georgia license plates are issued, those assigned for the transportation of employees of the Georgia Lottery Corporation to which regular Georgia license plates are issued, and those vehicles owned by the Department of Public Safety, the commissioner shall provide for registration and issuance of regular license plates for such vehicles. The license plates issued pursuant to this subsection shall be identical in appearance to regular license plates issued for private vehicles, except that such license plates shall not display any registration expiration. Such license plates may be transferred as provided for in subsection (d) of this Code section. Such license plates shall be issued at the time the vehicle is purchased by the state.

(c) All license plates issued to government vehicles pursuant to this Code section shall be marked in such a manner as to indicate the specific type of governmental unit operating the vehicle. These markings shall be prominently displayed and shall consist of one of the following appropriate legends: "STATE," "CITY," "COUNTY," "AUTHORITY," or "BOARD." In addition, each such license plate shall bear a county identification strip indicating the county in which the vehicle is based except that vehicles owned by the state shall not be required to bear such county identification strip.

(d) Any such license plates shall remain displayed and affixed upon such vehicle so long as such vehicle continues to be owned by the state or such municipality or political subdivision and used exclusively for governmental functions. Upon cessation of either such ownership or use, the license plate shall be removed from such vehicle and returned to the commissioner or the county tag agent for destruction. In the event of a transfer of a vehicle to a department or agency, or branch thereof, other than the specific one to which such vehicle is registered, the commissioner shall be notified in writing by the department or agency from which the same is being transferred upon a form prepared and furnished for such purpose by the commissioner. On due proof of loss of any such license plate, or of mutilation due to accidental or natural causes, another license plate may be issued upon application of the fiscal officer or other proper official of the department, agency, or political subdivision to which any such lost plate is registered.

(e) No person, firm, or corporation owning or operating any such vehicle shall display upon the motor vehicle any license plate provided for in this Code section unless at the time of such ownership or operation such vehicle is properly registered under this Code section and is owned by the state or a municipality or political subdivision of this state and is being used exclusively for governmental purposes. Any person who violates this subsection shall be guilty of a misdemeanor.

(f) This Code section shall apply to all vehicle license plates issued for governmental vehicles on and after January 1, 2007. (Ga. L. 1960, p. 777, §§ 3, 4; Ga. L. 1971, p. 667, § 1; Ga. L. 1980, p. 357, §§ 1, 2; Code 1981, § 40-2-35; Code 1981, § 40-2-37, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 1302, § 5; Ga. L. 2000, p. 951, § 3-8; Ga. L. 2001, p. 1173, §§ 2-2, 3-2; Ga. L. 2006, p. 434, § 2/HB 363; Ga. L. 2007, p. 652, § 2/HB 518.)

Cross references. — Purchase and lease of motor vehicles by local governments, § 36-91-1. Purchase and use of motor vehicles by state generally, § 50-19-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

State agencies entitled to governmental license tags. — Agency of the State of Georgia is entitled to a Georgia governmental license tag, should one ever be needed. 1979 Op. Att'y Gen. No. 79-14.

Because the historic Chattahoochee Commission is an agency of the State of Georgia, the commission would be entitled to a Georgia governmental license tag. 1985 Op. Att'y Gen. No. 85-24.

Exclusive possession of motor vehi-

cle basis for purchase of governmental license plate. — When the exclusive use and possession of a motor vehicle is donated to a municipality or political subdivision for use in a driver education program for a period of more than 30 days, the municipality or political subdivision is entitled to purchase, for use on that vehicle, a governmental license plate. 1969 Op. Att'y Gen. No. 69-246.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 85, 97, 98. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 28 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 189, 307 et seq.

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 ALR 374.

40-2-38. Registration and licensing of manufacturers, distributors, and dealers; dealer plates; calculation of registration requirements.

(a)(1) Manufacturers, distributors, and dealers engaged in the manufacture, sale, or leasing of vehicles required to be registered under Code Section 40-2-20 shall register with the commissioner, making application for a distinguishing dealer's number, specifying the name and make of motor vehicle, tractor, or trailer manufactured, sold, or leased by them, upon forms prepared by the commissioner for such purposes, and pay therefor a fee of \$62.00, which shall accompany such application. Upon payment of such fee by a dealer, the commissioner shall furnish to the dealer one master number plate to expire each year in accordance with subsection (f) of this Code section, to be known as a dealer's number and to be distinguished from the number plates provided for in this chapter by different and distinguishing colors to be determined by the commissioner. The dealer plate for a franchise motor vehicle dealer shall be distinguishable from the dealer plate for a used car dealer and from the dealer plate for a motor vehicle wholesaler. A dealer's number plate is for the purpose of demonstrating or transporting dealer's vehicles or trailers for sale or lease. Persons engaged in the business of transporting vehicles for a dealer under a vehicle's own power shall be permitted to use such dealer's plate for the purpose of transporting a vehicle.

(2) No dealer may use or permit to be used a dealer's number for private use or on cars for hire, for lease, or other manner not provided

for in this Code section. A dealer may use or permit to be used a dealer's number for private use on vehicles owned by the dealership, regardless of whether such vehicle has been issued a certificate of title or registered, when such vehicles are operated by an employee or corporate officer of the dealer which has been issued such number. A distinguishing dealer's number used by an employee or officer for private use shall authorize such person to operate the vehicle to which the number is attached on the public highways and streets. For purposes of this paragraph, "employee" means a person who works a minimum of 36 hours per week at the dealership.

(3) The manufacturer's or distributor's license plate is limited to no longer than six months' use per vehicle. Upon payment of such a fee by a manufacturer or distributor, the commissioner shall issue to manufacturers and distributors number plates with the word "Manufacturer" or "Distributor" on such plates. Nothing in this subsection shall preclude a manufacturer or distributor from using a "Manufacturer" or "Distributor" number plate on motor vehicles it owns when such vehicles are used for evaluation or demonstration purposes, notwithstanding incidental personal use by a manufacturer or distributor. A dealer may apply for one or more distinguishing dealer's numbers. In the event the dealers, distributors, or manufacturers desire more than one tag, they shall so state on the application, and, in addition to the fee of \$62.00 provided in this Code section, shall pay \$12.00 for each and every additional number plate furnished.

(b) Dealer plates shall be issued in the following manner:

(1) Dealers shall be issued a master plate and two additional plates, for a total of three initial plates; and

(2) In addition to the three dealer plates issued in accordance with paragraph (1) of this subsection, each dealer may also be issued one additional dealer plate for every 20 units sold in a calendar year.

In order to determine the additional number and classification of plates to be issued to a dealer, a dealer shall be required to certify by affidavit to the department the number of retail and wholesale units sold in the prior calendar year using the past motor vehicle sales history of the dealer as identified by department records of documentation approved by the department. If no sales history is available, the department shall issue a number of plates based on an estimated number of sales for the coming calendar year. The department may, in its discretion, request documentation supporting sales history and may increase or decrease the number and classification of plates issued based on actual sales.

(c) This Code section shall not apply in any manner to mopeds as such term is defined in Code Section 40-1-1.

(d) The license plates issued pursuant to this Code section shall be revoked and confiscated upon a determination after a hearing that such

dealer, distributor, or manufacturer has unlawfully used such license plates in violation of this Code section.

(e) If a license plate issued pursuant to this Code section is lost or stolen, the dealer, manufacturer, distributor, or other party to whom the license plate was issued must immediately report the lost or stolen plate to local law enforcement agencies. If a replacement license plate is sought, the dealer, manufacturer, distributor, or other party to whom the license plate was issued shall file a notarized affidavit with the department requesting a replacement plate. Such affidavit shall certify under penalty of perjury that the license plate has been lost or stolen and that the loss has been reported to a local law enforcement agency.

(f)(1) The expiration of a license plate issued pursuant to this Code section shall be the last day of the registration period as provided in division (a)(1)(A)(ii) of Code Section 40-2-21, except that for the purposes of this subsection, the registration period shall be determined by the first letter of the legal name of the business listed on the application for registration or renewal of registration. An application for renewal of registration shall not be submitted earlier than 90 days prior to the last day of the registration period. A penalty of 25 percent of the total registration fees due shall be assessed any person registering pursuant to this Code section who, prior to the expiration of such person's registration period, fails to apply for renewal or if having applied fails to pay the required fees.

(2) A transition period shall commence on October 1, 2007, and conclude on December 31, 2007, for all existing registrations and any new registration applications presented prior to January 1, 2008. On or after January 1, 2008, new applications for registration shall be submitted and remain valid until the expiration of such registration as specified in paragraph (1) of this subsection.

(g) The commissioner shall adopt rules and regulations for the implementation of this Code section. (Ga. L. 1927, p. 226, § 7; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-213; Ga. L. 1963, p. 529, § 1; Ga. L. 1977, p. 591, § 1; Ga. L. 1978, p. 2241, § 2A; Code 1981, § 40-2-36; Ga. L. 1982, p. 3, § 40; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-38, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2978, § 1; Ga. L. 1993, p. 296, § 1; Ga. L. 1997, p. 1559, § 1; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 321, § 2/HB 455; Ga. L. 2006, p. 465, § 1/HB 1052; Ga. L. 2007, p. 652, §§ 3, 4/HB 518.)

Cross references. — Registration and licensing of makers and dealers of motor vehicles, § 40-2-153.

JUDICIAL DECISIONS

Former Code 1933, § 68-213 was a license certificate law and a revenue measure. *Cambron v. Cogburn*, 116 Ga. App. 373, 157 S.E.2d 534 (1967) (see O.C.G.A. § 40-2-38).

Liability for vehicle driver's negli-

gence. — Dealer is not liable as a matter of public policy for the negligence of a driver of a vehicle to whom the dealer has illegally provided a dealer's tag. *Cambron v. Cogburn*, 116 Ga. App. 373, 157 S.E.2d 534 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Mandatory registration for automobile dealer. — It is mandatory for automobile dealer to register with commissioner and obtain a dealer tag, even though the dealer has no use for such. 1954-56 Op. Att'y Gen. p. 473.

Used car dealers were required to buy dealer's tags since there was no distinction between used car dealers and new car dealers in former Code 1933, § 68-213. 1952-53 Op. Att'y Gen. p. 221 (see O.C.G.A. § 40-2-38).

Dealers in motor scooters are required to register and secure dealer's tags. 1954-56 Op. Att'y Gen. p. 471.

Tax commissioner accepting check returned by bank. — When a tax commissioner accepts a check as payment for a motor vehicle license plate, which is not honored by the bank but returned marked "insufficient funds," the commissioner

does not have the authority to seize or cancel the license plate which the commissioner issued; the tag agent accepts checks for motor vehicle license fees at the agent's own risk; consequently, the tag agent has a cause of action against the applicant for the amount of the license fee and the possibility of criminal action against the applicant. 1968 Op. Att'y Gen. No. 68-215.

Dealer using tags for other than demonstrating or transporting vehicles. — Dealer who permits dealer's tags to be used for purposes other than demonstrating or transporting dealer-owned vehicles for sale may and should be prosecuted as for a misdemeanor, but the tags may not properly be picked up by a law enforcement officer unless the dealer registration has been revoked for cause. 1954-56 Op. Att'y Gen. p. 472.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 161 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 186.

40-2-38.1. Transporter license plate.

(a) A person engaged in the business of the limited operation of a motor vehicle or trailer for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:

(1) To facilitate the delivery of new or used motor vehicles, trucks, trailers, or buses between manufacturers, distributors, dealers, sellers, or purchasers;

(2) To move a mobile office, a mobile classroom, a mobile or manufactured home, or a house trailer;

(3) To drive a motor vehicle or pull a trailer that is part of the inventory of a dealer to and from a motor vehicle or trailer trade show or exhibition or to, during, and from a parade in which the motor vehicle or trailer is used; or

(4) To drive special mobile equipment in any of the following circumstances:

(A) From the manufacturer of the equipment to a facility of a dealer; or

(B) From one facility of a dealer to another facility of a dealer.

(b) This Code section shall not be construed to require a motor vehicle or trailer dealer to obtain transporter plates in order to transport vehicles for sale or lease.

(c) A person may obtain a transporter plate by filing an application with the Department of Revenue and paying the required fee. The fee for an initial transporter plate shall be \$62.00 and the fee for all additional plates shall be \$12.00. An application for a transporter plate must be on a form provided by the department and must contain the information required by the department. The department is authorized to promulgate regulations consistent with this Code section.

(d) Transporter plates issued under this Code section shall be distinguishable from dealer, wholesaler, manufacturer, or distributor plates, as provided for in Code Section 40-2-38.

(e) During the year for which it is issued, a person may transfer a transporter plate from one vehicle to another so long as the vehicle is driven or pulled only for a purpose authorized by subsection (a) of this Code section. In order to obtain a transporter plate, an applicant must demonstrate to the department compliance with all applicable federal and state laws.

(f) The license plates issued pursuant to this Code section shall be revoked and confiscated upon a determination after a hearing that an applicant has unlawfully used such license plates for purposes other than those expressly permitted by this Code section.

(g) If a license plate issued pursuant to this Code section is lost or stolen, the dealer, manufacturer, distributor, or other party to whom the license plate was issued must immediately report the lost or stolen plate to local law enforcement agencies. If a replacement license plate is sought, the dealer, manufacturer, distributor, or other party to whom the license plate was issued shall file a notarized affidavit with the department requesting a replacement plate. Such affidavit shall certify under penalty of perjury that the license plate has been lost or stolen and that the loss has been reported to a local law enforcement agency.

(h) This Code section shall not in any way apply to farm tractors.

(i)(1) The expiration of a license plate issued pursuant to this Code section shall be the last day of the registration period as provided in division (a)(1)(A)(ii) of Code Section 40-2-21, except that for the purposes of this subsection, the registration period shall be determined by the first letter of the legal name of the business listed on the application for registration or renewal of registration. An application for renewal of registration shall not be submitted earlier than 90 days prior to the last day of the registration period. A penalty of 25 percent of the total registration fees due shall be assessed any person registering pursuant to this Code section who, prior to the expiration of such person's registration period, fails to apply for renewal or if having applied fails to pay the required fees.

(2) A transition period shall commence on October 1, 2007, and conclude on December 31, 2007, for all existing registrations and any new registration applications presented prior to January 1, 2008. On or after January 1, 2008, new applications for registration shall be submitted and remain valid until the expiration of such registration as specified in paragraph (1) of this subsection.

(j) The commissioner shall adopt rules and regulations for the implementation of this Code section. (Code 1981, § 40-2-38.1, enacted by Ga. L. 2006, p. 465, § 2/HB 1052; Ga. L. 2007, p. 652, § 5/HB 518; Ga. L. 2012, p. 155, § 1/HB 732.)

The 2012 amendment, effective July 1, 2012, inserted "or trailer" throughout subsection (a) and once in subsection (b); inserted "trailers," in paragraph (a)(1);

inserted "or pull a trailer" in paragraph (a)(3); and inserted "or pulled" in the first sentence of subsection (e).

40-2-39. Registration and licensing of new motor vehicle dealers; temporary site permits.

(a) As used in this Code section, the term:

(1) "Dealer" means any person engaged in the business of selling or leasing or offering to sell or lease new motor vehicles and who is licensed or otherwise authorized to utilize trademarks or service marks associated with one or more makes of motor vehicles in connection with such sales or leases. The term "dealer" shall not mean any person engaged solely in the business of selling used motor vehicles and shall not mean any person engaged in the solicitation, advertising, or financing of the sale of new motor vehicles and shall not mean any person engaged solely in activities as a manufacturer or distributor of new motor vehicles.

(2) "Distributor" means any person who, pursuant to a contract with a manufacturer, sells or offers to sell new motor vehicles to new motor vehicle dealers.

(3) "Established place of business" means a permanent salesroom or sales office of a new motor vehicle dealer, which permanent salesroom or sales office is located in a permanent building on an open lot and which is marked by an appropriate sign and at which a permanent business of bartering, trading, or selling of new motor vehicles is carried on in good faith.

(4) "Manufacturer" means any person who makes or assembles new motor vehicles.

(5) "Motor vehicle" means every self-propelled vehicle intended primarily for use and operation on the public highways, except farm tractors and other machines and tools used in the production, harvesting, and care of farm products and except construction equipment.

(6) "New motor vehicle" means a motor vehicle which has been sold to a dealer and on which the original motor vehicle title has not been issued.

(7) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(8) "Temporary site" means a location at which new or used motor vehicles are sold or offered for sale for which a temporary site permit has been issued by the department in accordance with paragraph (4) of subsection (b) of this Code section and which location is:

(A) Used for a period not to exceed 96 hours in any 30 day period of time;

(B) Used not more than three times in any calendar year; and

(C) Located in the county in which the established place of business of the new motor vehicle dealer using the temporary site is located or an adjoining county.

(9) "Trade shows" means the display or solicitation for sale of new motor vehicles at a location other than the established place of business at which the sales transaction is accomplished or at which delivery of the new motor vehicle is completed.

(b)(1) It shall be unlawful for any person to engage in any activity as a new motor vehicle dealer unless and until such person has registered with the commissioner and obtained a dealer's number license plate under Code Section 40-2-38 for each established place of business at which the person engages in such activity. The commis-

sioner shall not accept such application for registration and shall not issue a dealer's number license plate unless and until the applicant establishes to the satisfaction of the commissioner, under criteria established by rules or regulations promulgated by the commissioner, that the applicant shall not engage in any activity of a new motor vehicle dealer except at an established place of business, a temporary site, or a properly licensed auto auction or licensed facility. This paragraph shall not be construed to prohibit a new motor vehicle dealer from delivering a vehicle off site if the transaction is initiated at an established place of business under this chapter.

(2) It shall be unlawful for any person to engage in any activity as a new motor vehicle dealer except at an established place of business which has been registered as such under this Code section and Code Section 40-2-38 or at a temporary site.

(3) This subsection shall not apply to new motor vehicle trade shows and shall not be construed to prohibit new motor vehicle trade shows or properly licensed auctions.

(4)(A) At least 60 days prior to the opening of a sale at a temporary site, a new motor vehicle dealer must make application to the department for a temporary site permit.

(B) To be eligible for a temporary site permit, a new motor vehicle dealer must be registered with the department as required by Code Section 40-2-38. In order to obtain a temporary site permit, a new motor vehicle dealer must provide, on a form promulgated by the department, the following:

(i) The address, including county, of the new motor vehicle dealer's established place of business;

(ii) The address, including county, of the temporary site location;

(iii) The dates and hours of the temporary site sale;

(iv) The number of temporary site sales already conducted by the new motor vehicle dealer during the calendar year in which the requested temporary site sale is to occur; and

(v) The name, address, and contact person of any sponsors, promoters, and lending institutions involved in or to be represented at the temporary site sale.

(C) As part of the application, a new motor vehicle dealer must submit written documentation demonstrating that the new motor vehicle dealer has complied with any licensing requirements applicable in the local jurisdiction in which the temporary site sale will

occur and a copy of a written agreement with the owner of the real property where the sale is to occur.

(D) A temporary site permit issued pursuant to this paragraph shall be valid only for the dates and hours of the sale as indicated in the application submitted to the department and must be prominently displayed at the temporary site at all times during the sale. No new motor vehicle dealer may purchase more than three temporary site permits within a calendar year. A temporary site permit is not transferable to any other dealer or location.

(E) The filing fee for each application for a temporary site permit shall be \$100.00.

(c) As an alternative to criminal or other civil enforcement, the commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant thereto, may issue an administrative fine not to exceed \$1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person has violated any provisions of this Code section or any regulations or orders promulgated thereunder. If, after a hearing, the commissioner determines that any person has violated this Code section more than once, the commissioner may suspend a dealer's registration for a period not to exceed ten days. Any hearing and any administrative review held pursuant to this Code section shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this subsection shall be paid into the state treasury. The commissioner may file, in the superior court (1) wherein the person under order resides; (2) if such person is a corporation, in the county wherein the corporation maintains its established place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this Code section or any order, rules, or regulations promulgated pursuant thereto. For purposes of this subsection, the sale of each motor vehicle while not in compliance with

temporary site permit requirements shall constitute a separate violation.

(d) Any person who violates any provision of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed \$1,000.00 or imprisonment for a period not to exceed 12 months, or both. (Code 1981, § 40-2-36.1, enacted by Ga. L. 1988, p. 854, § 1; Code 1981, § 40-2-39, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1998, p. 1179, § 6; Ga. L. 2005, p. 321, § 3/HB 455; Ga. L. 2006, p. 72, § 40/SB 465.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “section” was made lower case in paragraph (a)(8) and “department” was substituted for “Department of Motor Vehicle Safety” in paragraph (a)(8) and in subparagraph (b)(4)(A).

Administrative rules and regulations. — Requirements for dealer’s established place of business, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Registration and Licensing of Vehicles, Rule 375-2-4-.02.

JUDICIAL DECISIONS

Effect of noncompliance on Commercial Code transaction. — Noncompliance with O.C.G.A. § 40-2-39 does not void a commercial transaction that is oth-

erwise valid under the Commercial Code. *Perimeter Ford, Inc. v. Edwards*, 197 Ga. App. 747, 399 S.E.2d 520 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 161 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 186.

40-2-39.1. Restrictions on sale or advertising of used motor vehicles displayed or parked; exceptions; enforcement; penalty.

(a)(1) An owner or lessee of any real property shall not authorize more than five used motor vehicles within any 12 month period displayed or parked on such real property for the purpose of selling or advertising the sale of such used motor vehicles by the owner or lessee of such vehicles.

(2) An owner or lessee of any real property shall not authorize more than two used motor vehicles at the same time displayed or parked on such real property for the purpose of selling or advertising the sale of such used motor vehicles by the owner or lessee of such vehicles.

(3) An owner or lessee of any used motor vehicle shall not display or park such used motor vehicle on the real property of another for the purpose of selling or advertising the sale of such used motor

vehicle if the display or parking of such vehicle will cause the owner or lessee of the real property to be in violation of paragraph (1) or (2) of this subsection.

(4) An owner or lessee of any used motor vehicle shall not display or park such used motor vehicle on the real property of another for the purpose of selling or advertising the sale of such used motor vehicle unless the owner or lessee of such vehicle has the prior permission of the owner or lessee of the real property.

(b) The provisions of subsection (a) of this Code section shall not apply:

(1) If the owner or lessee of the vehicle displayed or parked is employed by the owner or lessee of the real property on which the vehicle is displayed or parked;

(2) If the owner or lessee of the vehicle displayed or parked is conducting business with the owner or lessee of the real property on which the vehicle is parked or displayed at the time such vehicle is displayed or parked; or

(3) If the real property on which a vehicle is parked is a parking lot for which a fee is charged for the use of such parking lot, the owner or lessee of the parked vehicle has paid the fee for the use of such parking lot, and such vehicle is legitimately parked on the property for purposes other than displaying, selling, or advertising the sale of such vehicle.

(c)(1) An owner or lessee of any real property shall not authorize any used motor vehicle to be displayed or parked on such real property for the purpose of selling or advertising the sale of such used motor vehicle if such vehicle is not lawfully titled and registered in the name of the individual or entity offering such vehicle for sale in accordance with the applicable provisions of this chapter and Chapter 3 of this title.

(2) A person shall not advertise, display, sell, or offer for sale any used motor vehicle unless such vehicle is lawfully titled and registered in such person's name in accordance with the applicable provisions of this chapter and Chapter 3 of this title.

(d) Any law enforcement officer or agency, the board, or the owner or lessee of any real property upon which a vehicle is displayed or parked in violation of subsection (a) or (c) of this Code section for longer than 24 consecutive hours may have any such vehicle towed from such real property and stored at the expense of the owner or lessee of such vehicle and may then dispose of said vehicle in accordance with Chapter 11 of this title.

(e) A violation of this Code section shall constitute an unfair or deceptive act or practice and shall be a violation of Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.” A violation of this Code section may be penalized as provided in Code Section 43-47-21 or any other applicable provision of this Code, including, but not limited to, the “Fair Business Practices Act of 1975.”

(f) This Code section shall not apply to any person licensed under Chapter 47 of Title 43 or to any franchised motor vehicle dealer or any subsidiary wholly owned or controlled by such dealer. This Code section shall not eliminate or change the requirement for any person to obtain a license under Chapter 47 of Title 43 if such person engages in any conduct or activity for which a license is required under Chapter 47 of Title 43.

(g) Any person who violates this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed \$1,000.00 for each violation or imprisonment for a period not to exceed 12 months, or both. (Code 1981, § 40-2-39.1, enacted by Ga. L. 2007, p. 214, § 2/HB 144.)

Editor’s notes. — Ga. L. 2007, p. 214, § 4/HB 144, not codified by the General Assembly, provides, in part, that prosecutions for or cases involving any violation of law occurring prior to July 1, 2007, shall not be affected by the repeals or amendments made by it or abated by reason thereof.

40-2-40. Registration of delinquent vehicles; collection and disposition of penalties.

(a) The owner of a vehicle required to be registered under Code Section 40-2-20 which was registered for the previous year, who has failed to comply with Code Section 40-2-20 for the current year shall be deemed and held to be a delinquent under this Code section; and the registration of such vehicle shall, after the expiration of the owner’s registration period, be subject to a penalty of 25 percent of the registration fee for such vehicle in addition to the fee provided by law, provided that such penalty shall in no event be levied prior to the expiration of the owner’s registration period, notwithstanding that the owner failed to register such vehicle within an initial registration period.

(b) All applications for the registration of a delinquent vehicle shall, before being accepted by a tag agent, be first endorsed by a sheriff or a deputy sheriff, a chief of police or his or her designated representative, a state law enforcement officer, a tax commissioner, or a tax collector. The officer endorsing the delinquent application shall indicate, with his or her endorsement on the application, the total amount of the prescribed registration fee together with the 25 percent penalty provided in this Code section, and the full total of such amount shall be paid to

the tag agent before any license plate or revalidation decal as provided for in this chapter shall be assigned to the applicant.

(c) All penalties assessed under this Code section shall be accredited in the office of the tag agent when received in the name of the officer making the endorsement, without regard to the residence of the applicant, whether such penalty is received through the exercise of such officer's authority as an arresting officer or through appearance of the applicant at his office for proper endorsement on an application.

(d) Between the first and fifth days of each calendar month, the tag agent shall remit to the respective fiscal authorities of the counties or cities employing the endorsing officers the full amount of such penalties accredited to such officers during and for the preceding calendar month. All sums accredited to state law enforcement officers shall be paid to the fiscal authorities of the county where the vehicle is registered. (Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 213, § 1; Code 1933, § 68-201; Ga. L. 1943, p. 341, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 392, § 2; Ga. L. 1959, p. 351, § 1; Ga. L. 1969, p. 266, § 1; Ga. L. 1973, p. 595, § 2; Ga. L. 1973, p. 781, § 1; Ga. L. 1974, p. 414, § 1; Code 1981, § 40-2-37; Ga. L. 1986, p. 1053, § 4; Code 1981, § 40-2-40, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1995, p. 809, § 6; Ga. L. 1996, p. 1118, § 5; Ga. L. 1997, p. 419, § 9; Ga. L. 2000, p. 523, § 2; Ga. L. 2001, p. 4, § 40; Ga. L. 2005, p. 334, § 14-3.1/HB 501.)

Editor's notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the

Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Sheriff formerly personally paid for services. — County sheriff was, for the performance of the endorsement service, only an agent of the state revenue commissioner and, as such an agent, the sheriff was personally paid for the services the sheriff rendered; there was no provision at that time which required the sheriff to pay such funds to the fiscal authority of the

county. *DeKalb County v. Broome*, 215 Ga. 203, 109 S.E.2d 769 (1959); *Howell v. Muscogee County*, 105 Ga. App. 515, 125 S.E.2d 139 (1962).

Cited in *Bentley v. State*, 70 Ga. App. 494, 28 S.E.2d 658 (1944); *Georgia Pub. Serv. Comm'n v. Jones Transp., Inc.*, 213 Ga. 514, 100 S.E.2d 183 (1957).

OPINIONS OF THE ATTORNEY GENERAL

Operation by resident of vehicle licensed in another state. — Operation in the State of Georgia by a resident of the State of Georgia of a motor vehicle owned by the operator or another Georgia resident and licensed in another state was a violation of former Code 1933, § 68-201. 1968 Op. Att'y Gen. No. 68-258 (see O.C.G.A. § 40-2-40).

When mail order applicant penalized. — Mail order applicant cannot be subjected to civil penalties until April 2, or until the expiration of 15 days after the date of a proper money order receipt issued on or before April 1, whichever is later. 1958-59 Op. Att'y Gen. p. 209.

No discretion vested in sheriff in collection of penalty. — Former Code 1933, § 68-201 was not in itself a tax statute, but rather one of a regulatory nature, and from the words employed, no discretion was vested in the sheriff in collecting or not collecting the penalty or the fee as the words employed are those of

command and not discretion. 1950-51 Op. Att'y Gen. p. 189 (see O.C.G.A. § 40-2-40).

Fee received by sheriff for delinquent application for automobile tag is remitted to the commissioner. 1954-56 Op. Att'y Gen. p. 469 (decided under former Code 1933, § 68-201, prior to amendment by Ga. L. 1974, p. 414, § 1).

Penalties and the endorsement fees should be paid to officers in addition to compensation they receive as officers. 1957 Op. Att'y Gen. p. 216 (decided under former Code 1933, § 68-201, prior to amendment by Ga. L. 1974, p. 414, § 1).

Impoundment of vehicles. — Chief of police is authorized to seize and impound vehicles owned by residents of this state which are based in this state and for which no Georgia license plates have been issued. 1962 Op. Att'y Gen. p. 323.

Jurisdiction of probate court. — Probate court is without jurisdiction to try offense of operating motor vehicle with expired tags. 1958-59 Op. Att'y Gen. p. 67.

RESEARCH REFERENCES

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or licensing of operator, 35 ALR 62; 38 ALR 1038; 43 ALR 1153; 54 ALR 532; 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375.

Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 ALR3d 506.

40-2-41. Display of license plates.

Unless otherwise permitted under this chapter, every vehicle required to be registered under this chapter, which is in use upon the highways, shall at all times display the license plate issued to the owner for such vehicle, and the plate shall be fastened to the rear of the vehicle in a position so as not to swing and shall be at all times plainly visible. No person shall display on the rear of a motor vehicle any temporary or permanent plate or tag not issued by the State of Georgia which is intended to resemble a license plate which is issued by the State of Georgia. The commissioner is authorized to adopt rules and regulations so as to permit the display of a license plate on the front of certain vehicles. It shall be the duty of the operator of any vehicle to keep the license plate legible at all times. No license plate shall be covered with any material unless the material is colorless and transparent. No

apparatus that obstructs or hinders the clear display and legibility of a license plate shall be attached to the rear of any motor vehicle required to be registered in the state. Any person who violates any provision of this Code section shall be guilty of a misdemeanor. (Ga. L. 1927, p. 226, § 8; Code 1933, § 68-215; Ga. L. 1977, p. 596, § 1; Code 1981, § 40-2-38; Ga. L. 1982, p. 1584, §§ 3, 6; Code 1981, § 40-2-41, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1991, p. 779, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1997, p. 419, § 10; Ga. L. 2000, p. 523, § 3.)

Administrative rules and regulations. — Display of Tags, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-10.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770(28) are included in the annotations for this Code section.

Constitutionality. — Former Code 1910, § 1770 was not open to attack on the ground that the statute was not one of the subjects included in the Governor's proclamation convening the legislature in extraordinary session. *Lee v. State*, 163 Ga. 239, 135 S.E. 912 (1926) (decided under former Code 1910, § 1770 (28)).

License plate covering. — There was clear evidence of a violation of O.C.G.A. § 40-2-41 since the defendant's license plate was heavily obscured by a smoky covering. *Knight v. State*, 234 Ga. App. 359, 506 S.E.2d 245 (1998).

Trial court erred in granting the suppression motions filed by both the first and second defendant, who occupied the vehicle stopped, as a violation of O.C.G.A. § 40-2-41 provided a sufficient reason for the traffic stop; moreover, the trial court erred in ruling that some portions of O.C.G.A. § 40-2-41 did not apply to the out-of-state license plate on the subject vehicle and by ruling that even though the

word "Carolina" on the license plate was not legible, and hence, there was no violation of the statute because the police officer testified about an inability to recognize the tag as a South Carolina license plate. *State v. Davis*, 283 Ga. App. 200, 641 S.E.2d 205 (2007).

Stop of vehicle justified by obscured plate. — Although the defendant's car had license plates from South Carolina, a state trooper was still justified in making a stop of the defendant's car because the visibility and display portions of O.C.G.A. § 40-2-41 were applicable to all vehicles, and the defendant's license plate had a bracket around the plate that blocked the view of the registration expiration date. *Wilson v. State*, 306 Ga. App. 286, 702 S.E.2d 2 (2010).

Cited in *Cumbie v. State*, 38 Ga. App. 744, 145 S.E. 667 (1928); *Undercofler v. White*, 113 Ga. App. 853, 149 S.E.2d 845 (1966); *State v. Tate*, 208 Ga. App. 117, 430 S.E.2d 9 (1993); *State v. Aguirre*, 229 Ga. App. 736, 494 S.E.2d 576 (1997); *Gonzales v. State*, 255 Ga. App. 149, 564 S.E.2d 552 (2002); *State v. Long*, 301 Ga. App. 839, 689 S.E.2d 369 (2010); *Hernandez-Lopez v. State*, 319 Ga. App. 662, 738 S.E.2d 116 (2013).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and

file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

RESEARCH REFERENCES

- C.J.S.** — 60 C.J.S., Motor Vehicles, “tamper” with motor vehicle or contents, [§ 283. 284, 285. or to obscure registration plates, 57
ALR. — Validity and construction of ALR3d 606.
statute making it a criminal offense to

40-2-41.1. Authentic historical Georgia license plates.

(a) As used in this Code section, the term “authentic historical Georgia license plate” means a license plate originally issued in the year 1970 or earlier and originally required to be displayed on motor vehicles operated upon the streets and highways of this state in the year 1970 or earlier pursuant to former motor vehicle registration laws of this state.

(b) The owner of any antique motor vehicle manufactured in 1970 or earlier shall be authorized to display in lieu of and in the same manner as the license plate otherwise required under Code Section 40-2-41 an authentic historical Georgia license plate which clearly represents the model year of any such antique motor vehicle, provided that the owner has properly registered such antique motor vehicle for the current year as otherwise required under this chapter and has obtained a current Georgia license plate or revalidation decal for such antique motor vehicle. Such currently valid Georgia license plate shall be kept in such antique motor vehicle at all times but need not be displayed in a manner to be visible from outside the vehicle.

(c) For purposes of this Code section, the authentic historical Georgia license plate shall be furnished by the owner of any such antique motor vehicle.

(d) No later than January 1, 2006, the commissioner shall have installed within the department’s computer information system applicable to the registration of motor vehicles the necessary program which will include in the information relating to the current Georgia license plate or revalidation decal issued for an antique motor vehicle the information relating to the authentic historical Georgia license plate authorized to be displayed on such antique motor vehicle. (Code 1981, § 40-2-41.1, enacted by Ga. L. 1999, p. 791, § 2; Ga. L. 2001, p. 1021, § 2; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 593, § 1/SB 117.)

RESEARCH REFERENCES

- Am. Jur. 2d.** — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 59.

40-2-42. Transfer of license plates and revalidation decals.

(a) A license plate or revalidation decal, when issued, shall be transferred from one vehicle to another vehicle of the same class acquired by the same person as provided in this chapter. Any use of a license plate or revalidation decal by any other person or persons in any manner not provided for in this chapter shall be a violation of this chapter.

(b) The commissioner shall provide by rules and regulations appropriate procedures whereby, upon the payment of a fee of \$5.00, and, upon preparation and filing of an appropriate application therefor, currently valid annual and five-year license plates and revalidation decals shall be transferred from one vehicle to another vehicle of the same class of which ownership is acquired following that person's or those persons' ceasing to own or operate on the public roads the vehicle for which such plate was originally issued and during the initial registration period for the acquired vehicle. If such acquired vehicle is of a different class than the vehicle no longer owned or operated by such person, he or she shall submit the license plate currently issued to him or her for cancellation and, upon payment of any additional fee for registering such acquired vehicle, the commissioner shall issue a new license plate to such person for use on such acquired vehicle. License plates and revalidation decals may be transferred in accordance with the provisions of this subsection at any time after issuance or renewal thereof and until the expiration of the period for which issued.

(c) The commissioner shall provide appropriate procedures whereby, when the registered owner of a jointly owned motor vehicle is deceased, the license plate issued for the motor vehicle may, upon appropriate application and payment of fees, be transferred to the surviving owner's name, provided that the surviving owner acquires a new certificate of title under subsection (d) or paragraph (1) of subsection (e) of Code Section 40-3-34 and makes the payment of appropriate ad valorem taxes. (Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-214; Ga. L. 1939, p. 182, § 2; Ga. L. 1969, p. 266, § 3; Ga. L. 1972, p. 178, § 1; Ga. L. 1979, p. 615, § 2; Ga. L. 1981, p. 714, § 3; Code 1981, § 40-2-39; Ga. L. 1990, p. 8, § 40; Code 1981, § 40-2-42, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 3; Ga. L. 1997, p. 419, § 11; Ga. L. 1998, p. 1179, § 7.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Cited in Undercoffler v. White, 113 Ga. App. 853, 149 S.E.2d 845 (1966); Garner v. State, 154 Ga. App. 839, 269 S.E.2d 912 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Payment of fee is essential for transfer. — Change of registration of motor vehicle is accomplished only by payment of fee of \$1.00 (now \$5.00); this is true even though there is no actual change in the ownership of the vehicle but merely a change in the name of the owner. 1954-56 Op. Att'y Gen. p. 486.

Transferring of plates between trailers. — Company in sign business which employs number of portable electric sign trailers cannot transfer plates from one trailer to another as the trailers are used. 1972 Op. Att'y Gen. No. U72-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 35 et seq., 44 et seq., 50 et seq.

40-2-43. Certificate of registration; replacement of lost registration certificate; issuing of duplicates.

(a) Upon an applicant's compliance with all laws relevant to the registration of his vehicle, the appropriate licensing authority shall issue to such applicant a certificate of registration for his vehicle. If a registration certificate issued under this chapter is lost, stolen, mutilated, or destroyed or becomes illegible, the registered owner shall promptly make application for a duplicate registration certificate to the commissioner. The commissioner, upon receipt of an application and a fee of \$1.00, shall issue the registered owner a duplicate registration certificate. If the application for a duplicate registration certificate is submitted to the same county that issued the current certificate of registration, the county tag agent may issue the duplicate registration certificate and may retain the application fee as compensation for issuing such duplicate certificate of registration.

(b) Any dealer or owner of a vehicle may apply to the commissioner or any county tag agent for a duplicate of the last registration certificate issued to the previous or current owner for that vehicle. The commissioner or county tag agent, upon receipt of an application and a fee of \$1.00, shall provide the duplicate registration certificate. (Ga. L. 1925, p. 315, § 1; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-206; Ga. L. 1978, p. 901, § 1; Code 1981, § 40-2-41; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 1276, § 1; Ga. L. 1986, p. 1333, § 2; Code 1981, § 40-2-43, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1997, p. 419, § 11A; Ga. L. 1998, p. 1179, § 8.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Refusal of plates to applicants who cannot prove ownership. — State Revenue Commissioner may refuse to issue motor vehicle license plates to firms or individuals who cannot submit satisfactory proof of ownership. 1952-53 Op. Att'y Gen. p. 224.

Dealer using tags for other than demonstrating or transporting vehi-

cles. — Dealer who permits dealer tags to be used for purposes other than demonstrating or transporting dealer-owned vehicles for sale may, and should, be prosecuted as for a misdemeanor, but the tags may not properly be picked up by a law enforcement officer unless the dealer registration has been revoked for cause. 1954-56 Op. Att'y Gen. p. 472.

40-2-44. Reporting of theft, loss, or mutilation of license plates or revalidation decals; issuance of duplicates or replacements.

(a) Except as provided in subsection (b) of this Code section, the owner of a motor vehicle shall immediately report the theft, loss, or mutilation of a license plate or revalidation decal to the appropriate law enforcement agency or official, including but not limited to a municipal or county police department or officer, the county sheriff, the Department of Public Safety, or the Georgia State Patrol. Said owner shall obtain a copy of the police report and shall submit such copy to the commissioner with a fee of \$8.00 to obtain a duplicate license plate or revalidation decal. Alternatively, the copy of the police report may be submitted to the applicant's county tag agent with a fee of \$8.00 in which case the county tag agent is authorized to issue a replacement license plate or decal. In those instances in which a vehicle owner is unable to obtain a police report of such theft, loss, or mutilation of a license plate or revalidation decal, the owner shall be authorized to submit to the appropriate law enforcement agency or official and to either the commissioner or to the county tag agent a sworn affidavit as to such theft, loss, or mutilation in lieu of a police report and obtain a replacement license plate or decal. The county tag agent shall be entitled to retain as compensation for issuance of a replacement license plate or decal the same commission as provided for issuance of a new license plate or decal under the terms and conditions provided in subsection (b) of Code Section 40-2-33.

(b) If the license plate or revalidation decal is mutilated but still legible and if such license plate or revalidation decal is surrendered with the application for the duplicate, the requirements of subsection (a) of this Code section, relating to reporting the theft, loss, or mutilation of a license plate or decal and submitting a copy of a police report, shall not apply.

(c) A duplicate county decal when the original has been lost, defaced, or destroyed may be obtained from the commissioner at no cost. A replacement license plate or revalidation decal when the original has

been lost in the mail prior to receipt by the registered owner shall be issued by the commissioner without charge upon application and completion of the form and affidavit prescribed by the commissioner setting forth the circumstances of nonreceipt of the license plate or decal. The owner shall report the nonreceipt or loss of the license plate or decal to the appropriate law enforcement agency or official, including, but not limited to, a municipal or county police department or officer, the county sheriff, or the Department of Public Safety. Said owner shall obtain a copy of the police report on which the license plate or decal number is listed and shall submit such copy to the commissioner. The owner shall not be charged a fee by the Department of Public Safety or the local law enforcement agency or official for a copy of such police report.

(d) The commissioner is authorized to establish procedures and promulgate rules and regulations for carrying out this Code section. (Ga. L. 1927, p. 226, § 8; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-214; Ga. L. 1939, p. 182, § 2; Ga. L. 1969, p. 266, § 3; Ga. L. 1974, p. 397, § 1; Ga. L. 1979, p. 615, § 2; Ga. L. 1981, p. 714, § 3; Code 1981, § 40-2-40; Ga. L. 1982, p. 1584, §§ 1, 4; Code 1981, § 40-2-42, enacted by Ga. L. 1983, p. 676, § 1; Ga. L. 1985, p. 1278, § 1; Ga. L. 1988, p. 380, § 2; Code 1981, § 40-2-44, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2978, § 2; Ga. L. 1993, p. 91, § 40; Ga. L. 1994, p. 1851, § 1; Ga. L. 1995, p. 742, § 1; Ga. L. 2000, p. 951, § 3-9.)

40-2-45. Transferring license plate or revalidation decal for “salvage”, “rebuilt”, damaged, or demolished motor vehicles.

(a) No person shall transfer a license plate or decal from one vehicle to any other motor vehicle which is a “salvage” or “rebuilt” motor vehicle as provided in Chapter 3 of this title unless the owner of such vehicle submits satisfactory proof to the commissioner that the motor vehicle inspection required by Code Section 40-3-37 has been performed and such vehicle has been determined to be in full compliance with the law.

(b) Notwithstanding subsection (a) of this Code section, if a vehicle is damaged, scrapped, dismantled, or demolished and transferred to an insurance company or licensed rebuilder and the transferor of such vehicle has a current, unexpired license plate and registration issued therefor, such license plate shall be transferred to another vehicle acquired by such transferor according to the provisions of Code Section 40-2-42 or 40-2-80, as applicable. (Code 1981, § 40-2-43, enacted by Ga. L. 1989, p. 1186, § 1; Code 1981, § 40-2-45, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1997, p. 419, § 12; Ga. L. 1998, p. 1179, § 9.)

Cross references. — Certificates of title for salvage or rebuilt motor vehicles, §§ 40-3-35, 40-3-36.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, the spelling of “transferred” was corrected in subsection (b).

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Surrender of plates and registrations of salvage vehicles. — Owners and insurers are required to surrender to the commissioner the license plates and

registrations of vehicles which become salvage or total loss vehicles. 1997 Op. Att’y Gen. No. 97-24.

40-2-46. License plate commemorating 1996 Olympic Games.

Reserved. Repealed by Ga. L. 1998, p. 128, § 40, effective March 27, 1998, and by Ga. L. 1998, p. 1179, § 10, effective May 1, 1998.

Editor’s notes. — This Code section was based on Code 1981, § 40-2-46, en-

acted by Ga. L. 1991, p. 1683, § 1; Ga. L. 1993, p. 972, § 1.

40-2-47. Permanent registration and license plates for certain trailers; “leased or rented trailer” defined.

(a) Notwithstanding any other provision of this chapter to the contrary, the owner of any trailer, including:

(1) Any leased or rented trailer and including single pole and twin-beam trailers and other trailers used in commercial logging or commercial trailers used for the hauling of unprocessed farm products used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire, a private carrier, or a motor carrier of property; or

(2) Any boat trailer, utility trailer, or noncommercial cattle and livestock trailer,

shall have the option of obtaining a permanent registration and license plate for such trailer, in lieu of an annual registration and license plate, upon the payment of the one-time fee specified in Code Section 40-2-151 and compliance with the provisions of this Code section.

(b) The certificate of registration and license plate issued for a specific trailer under this Code section shall continue to be valid for the duration of the owner’s interest in such trailer. No registration or license plate issued for any trailer under this Code section shall be transferred for any reason and a new registration and license plate shall be required when ownership of the trailer is transferred to a new owner. The payment of the fee for a permanent registration and license

plate shall be in addition to and not in lieu of the payment of annual ad valorem taxes on such trailer during the period of December 1 to February 15.

(c) As used in this Code section, the term “leased or rented trailer” means any utility trailer that is owned by and leased or rented out by a person, firm, or corporation in the business of leasing or renting out such trailers. (Code 1981, § 40-2-47, enacted by Ga. L. 1994, p. 1373, § 1; Ga. L. 1995, p. 742, § 2; Ga. L. 1997, p. 419, § 12A; Ga. L. 2002, p. 1074, § 5; Ga. L. 2009, p. 449, § 2/SB 128.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, “one-time” was substituted for “one time” in the first sentence of subsection (a) (now the ending undesignated paragraph).

Editor’s notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this

Act.” This Act became effective July 1, 2002.

Ga. L. 2009, p. 449, § 4/SB 128, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to registration and licensing of trailers on and after January 1, 2010.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-48 through 40-2-49.1.

Repealed by Ga. L. 2006, p. 1094, §§ 3-5, effective January 1, 2007. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of these Code section designations.

Editor’s notes. — Code Sections §§ 40-2-48 through 40-2-49.1, relating to license plates promoting United States Disabled Athletes Fund, Nongame-Endangered Wildlife Program, and Bobwhite Quail Restoration Initiative were based on Code 1981, § 40-2-48, enacted by Ga. L. 1995, p. 238, § 1; Ga. L. 1997, p. 1415, § 1; Ga. L. 1998, p. 1179, § 11; Code 1981, § 40-2-49, enacted by Ga. L. 1995, p. 1021, § 1; Ga. L. 1997, p. 419, § 13; Ga. L. 1998, p. 1179, § 12; Code 1981, § 40-2-49.1, enacted by Ga. L. 1999, p. 791, § 1. For current provisions regarding these license plates, see Code Section 40-2-86.

Ga. L. 2006, p. 1094, § 13/HB 1053, not codified by the General Assembly, provides for the repeal of these Code sections effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of these Code sections.

40-2-49.2. License plates promoting the conservation of wildflowers.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Code 1981, § 40-2-49.2, enacted by Ga. L. 2001, p. 1021, § 3. For current provisions regarding this license plate, see Code Section 40-2-86(1)(5).

40-2-49.3. License plates promoting dog and cat reproductive sterilization support programs.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Code 1981, § 40-2-49.3, enacted by Ga. L. 2002, p. 1215, § 2. For current provisions regarding this license plate, see Code Section 40-2-86(1)(6).

ARTICLE 2A FLEET VEHICLES

40-2-50. Definitions.

As used in this article, the term:

(1) "Fleet" means 1,000 or more motor vehicles.

(2) "Fleet registration plan" means the method of registering the motor vehicles of a fleet as provided in this article. (Code 1981, § 40-2-50, enacted by Ga. L. 1998, p. 1179, § 12A.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, the subsection (a) designation was deleted and a period was substituted for "; and" at the end of paragraph (1).

40-2-51. Fleet enrollment.

(a)(1) A corporation or firm which has an established place of business in this state or which is controlled by a parent corporation which has an established place of business in this state and which owns or operates under a lease agreement a fleet which is not required to be registered under the International Registration Plan in accordance with Article 3A of this chapter may enroll in the fleet registration plan and register and obtain licenses to operate the motor vehicles in such fleet as provided in this article.

(2) The provisions of this article for fleet enrollment, registration, and licensing shall not apply to any corporation or firm which leases or rents motor vehicles to other persons for use thereby.

(b)(1) Applications for enrollment of a fleet under the fleet registration plan may be submitted to the department in the form and manner prescribed thereby during the period of December 1 of the prior registration year to February 15 of the year for which the

license plates are to be issued. Motor vehicles of a fleet shall be enrolled separately by classes and by counties where the vehicles are to be registered.

(2)(A) An applicant for enrollment of a fleet under the fleet registration plan shall pay a fleet enrollment fee of \$200.00 for initial enrollment of the fleet.

(B) If the applicant for enrollment of a fleet or the parent corporation or firm thereof has not had an established place of business in this state for a period of ten consecutive years or more, the applicant shall post a \$25,000.00 surety bond at the time of applying for enrollment.

(3) If the department determines that the applicant is eligible for fleet registration and proper application has been made, the department shall enroll the fleet, indicate the amount of license fees due for the fleet, validate the enrollment form or forms for the applicable county or counties, and mail the validated original enrollment form or forms with fees indicated to the applicant. Such enrollment shall be valid for a period which is concurrent with that period for which regular license plates are issued for use under Code Section 40-2-31. Thereafter, the department shall, prior to December 1 of each year of the enrollment period, mail the enrollee a statement of the amount of license fees due and payable during the forthcoming registration period for such fleet. (Code 1981, § 40-2-51, enacted by Ga. L. 1998, p. 1179, § 12A.)

40-2-52. Registration and obtaining of license; application of provisions for registering and licensing motor vehicles.

(a) After receipt of a validated fleet enrollment form, the owner or operator of the enrolled fleet shall register and obtain licenses to operate the motor vehicles thereof during the period of December 1 of the prior registration year to February 15 of the year for which the license plates are to be issued.

(b) An applicant for registration of a vehicle of an enrolled fleet shall submit a validated original fleet enrollment form to the county tag agent in each county in which vehicles enrolled under the fleet registration plan are to be registered.

(c) The provisions of Article 2 of this chapter for registering and licensing motor vehicles generally which are not inconsistent with the provisions of this article shall apply to the registration and licensing of each vehicle of an enrolled fleet. (Code 1981, § 40-2-52, enacted by Ga. L. 1998, p. 1179, § 12A.)

40-2-53. License plates.

(a)(1) Upon submission by the applicant of a validated original fleet enrollment form and compliance with all applicable requirements for registration and licensing of motor vehicles, the county tag agent shall issue to the applicant a fleet motor vehicle license plate for each vehicle of the fleet to be registered and licensed in such county.

(2) The county tag agent shall mark the validated original fleet enrollment form as “taxes paid” or “tax exempt,” as applicable, and return such form to the registrant.

(3) The registrant shall submit to the department the validated original fleet enrollment form which has been marked as provided in paragraph (2) of this subsection.

(b) Fleet motor vehicle license plates shall be similar in design to and issued for the same period as regular license plates issued under Code Section 40-2-31, except that such fleet motor vehicle license plates shall contain such words or symbols, in addition to the numbers and letters otherwise prescribed by law, so as to distinctively identify the motor vehicles on which they are placed as fleet motor vehicles. It shall be a requirement that a county name decal shall be affixed and displayed on license plates issued under this Code section.

(c)(1) License plates issued under this Code section shall be renewed annually with a generic fleet revalidation decal.

(2) The bond required under subsection (b) of Code Section 40-2-51 shall be required at the time of any renewal of such license plates if at the time of such renewal the registrant or the parent corporation or firm thereof has not had an established place of business in this state for a period of ten consecutive years or more.

(d) License plates issued under this Code section shall be transferred between vehicles in the same manner as provided by Code Section 40-2-80 for special license plates issued under Article 3 of this chapter. (Code 1981, § 40-2-53, enacted by Ga. L. 1998, p. 1179, § 12A.)

40-2-54. Audits.

(a) If a fleet registrant or the parent corporation or firm thereof has not had an established place of business in this state for a period of ten consecutive years or more, the department or its designated agent shall annually conduct an audit of such fleet registrant to ensure compliance with the requirements of this article which may include, without limitation, examination of records of all vehicles in a fleet, additions to or deletions from a fleet since the most recent such audit, and proof of proper payment of or exemption from ad valorem taxes on fleet vehicles.

The fleet registrant shall bear the cost of or reimburse the department for the expenses of any audit required by this subsection.

(b) The department or its designated agent may perform an audit of any fleet registrant to ensure compliance with the requirements of this article which may include, without limitation, examination of records of all vehicles in a fleet, additions to or deletions from a fleet since the most recent such audit, and proof of proper payment of or exemption from ad valorem taxes on fleet vehicles. (Code 1981, § 40-2-54, enacted by Ga. L. 1998, p. 1179, § 12A.)

40-2-55. Termination of participation in fleet registration plan.

An enrollment of a fleet in the fleet registration plan shall be terminated by the department in the event:

(1) The department determines on the basis of an audit that fees for registration and licensing are not paid as required for 20 percent or more of the vehicles in any class of vehicles in the fleet or of those vehicles of the fleet registered in a county;

(2) The department determines on the basis of an audit that fees for registration and licensing are not paid as required for 5 percent or more of the total vehicles in the fleet;

(3) Of the conviction of the fleet registrant for any unlawful use of any license plate issued for a fleet vehicle;

(4) Of the failure of the fleet registrant to pay ad valorem taxes as required for any fleet vehicle;

(5) Of the failure of the fleet registrant to pay enrollment fees as required; or

(6) Of the forfeiture of the surety bond required under Code Section 40-2-52 or 40-2-53. (Code 1981, § 40-2-55, enacted by Ga. L. 1998, p. 1179, § 12A.)

ARTICLE 3

PRESTIGE LICENSE PLATES AND SPECIAL PLATES FOR CERTAIN PERSONS AND VEHICLES

Administrative rules and regulations. — Issuance of Registration and License Plates, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Registration and Licensing of Vehicles, Chapter 375-2-3.

Issuance of Special Prestige License Plates, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-22.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 59.

40-2-60. Prestige license plates.

(a) Motor vehicle owners who are residents of Georgia, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and, except as provided in subsection (c) of this Code section, upon the payment of a fee of \$35.00 in addition to the regular motor vehicle registration fee, shall be issued special personalized prestige license plates by the commissioner. Special personalized license plates issued pursuant to this Code section shall be subject to an additional annual registration fee of \$35.00 as a condition of obtaining an annual revalidation decal for such license plate which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34.

(b) For the purpose of this Code section, a license plate with a low number or special number may also be considered as a prestige or personalized plate.

(c) Additional fees for special or distinctive license plates issued pursuant to this article shall be as prescribed in the Code section authorizing such plate, and, when no additional fee is specified, no additional fee shall be required.

(d) The commissioner is authorized to establish procedures and promulgate rules and regulations for carrying out this Code section. (Ga. L. 1968, p. 1404, §§ 2, 3, 5; Ga. L. 1985, p. 261, § 1; Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 4; Ga. L. 2010, p. 9, § 1-69/HB 1055.)

40-2-60.1. Standardized administrative process for special license plates; legislative findings; rules and regulations; definitions; utilization of funds; designs; fees; application for special license plates; continued issuance of plates; transfer of plates.

(a) The General Assembly finds that in recent years numerous laws were enacted providing for the issuance of special license plates for certain persons and vehicles. The General Assembly finds that there exists a need for a standardized administrative process to provide for the authorization of issuance of such special license plates and that the public interest will be best served by such a standardized administrative process. While recognizing that the legislature may not abridge or

delegate its powers, the General Assembly declares that it is in the public interest of this state for future proposals for special license plates to be governed by the administrative process established by this Code section rather than by the legislative process.

(b)(1) The General Assembly determines that the issuance of special license plates to support an agency, fund, or program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue Code and the dedication of a portion of the funds raised from the issuance of these special license plates is in the best interests of the people of this state and is authorized by Article III, Section IX, Paragraph VI(n) of the Constitution.

(2) The commissioner is authorized to adopt rules and regulations for the issuance of special license plates for groups of individuals and vehicles. All special license plates issued pursuant to this paragraph shall not be subject to the provisions of subsection (e) of this Code section.

(c) As used in this Code section, the term:

(1) "Manufacturing fee" means a \$25.00 fee paid at the time an application is submitted or upon the issuance of a special license plate.

(2) "Registration fee" means the fees as set forth in Code Section 40-2-151.

(3) "Special license plate" means a license plate that is authorized under this Code section that commemorates an event or supports an agency, fund, or program beneficial to the people of this state or is specifically authorized by the General Assembly for certain persons or vehicles.

(4) "Special license plate fee" means a \$35.00 fee paid at the time a special license plate is issued.

(5) "Special license plate renewal fee" means a \$35.00 fee paid at the time a special license plate is renewed and a revalidation decal is issued.

(c.1) Any special license plate issued under the provisions of this Code section shall be subject to the manufacturing fee, special license plate fee, and special license plate renewal fee provided for in this Code section.

(d) The agency, fund, or nonprofit corporation sponsoring a special license plate, in cooperation with the commissioner, shall design a special distinctive license plate appropriate to promote the program benefited by the issuance of the special license plate. Special license

plates for groups of individuals and vehicles shall be readily recognizable by the insertion of an appropriate logo or graphic identifying the special nature of the license plate. All special license plates must be of the same size as general issue motor vehicle license plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. No two recipients shall receive identically numbered plates. Spaces for county name labels or other authorized labels, including the "In God We Trust" label, are required for all special license plates unless expressly eliminated under this chapter.

(e) Before the department disburses to the agency, fund, or nonprofit corporation funds from the issuance of special license plates, the agency, fund, or nonprofit corporation must provide a written statement stating the manner in which such funds will be utilized. In addition, a nonprofit corporation must provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(f) Notwithstanding the other provisions of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise, received such licenses or other permissions as may be required to produce the special license plate. The department shall not utilize any graphic that is copyrighted unless a sponsoring organization has secured for the state the authority to utilize the copyrighted design at no cost to the state and the sponsoring organization has agreed to hold the state harmless against any related claim of copyright violation or infringement. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(g) Any Georgia resident who is the owner of a motor vehicle, except a commercial vehicle as defined in 49 C.F.R. Section 390.5, upon

complying with the motor vehicle laws relating to registration and licensing of motor vehicles and payment of the appropriate fees as set forth in this Code section in addition to the required motor vehicle registration fee, shall be able to apply for a special license plate as provided in this Code section.

(h) Any party requesting a special license plate not previously authorized by this chapter shall make application with the department. The application shall include a design of the proposed license plate and a bond of \$50,000.00 to serve as surety for moneys collected from applicants by the sponsor. The commissioner shall review and approve or disapprove all applications within 30 days of receipt by the department. Upon approval of the design by the commissioner, the special license plate authorized pursuant to this subsection shall not be issued except upon the receipt by the department of at least 1,000 prepaid applications together with the manufacturing fees within two years after the date of approval by the commissioner. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fees, and all fees held by the department and the sponsor shall be refunded to applicants; provided, however, that once the department has received 1,000 prepaid applications along with the manufacturing fees, the sponsor shall not be entitled to a refund.

(i) Upon the receipt of 1,000 applications together with manufacturing fees, the commissioner shall provide a letter of certification to the sponsor verifying that the sponsor has satisfied the requirements of the provisions of this Code section. Upon receipt of the letter of certification, the sponsor, if necessary, shall seek enactment of the appropriate legislation required to authorize manufacture of the special license plate.

(j) The department shall not be required to continue to manufacture a special license plate or accept renewals and applications if the number of active registrations falls below 500 registrations at any time during a calendar year. A current registrant may continue to renew such special license plate during his or her annual registration period. The department may continue to issue such special license plates that it has in its inventory to assist in achieving the minimum number of registrations. If the number of active registrations for the special license plate falls below 500 at any time during a calendar year, the sponsoring agency, fund, or nonprofit corporation shall be required to obtain 1,000 applications accompanied by the manufacturing fee to continue to manufacture the special license plate.

(k) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(l) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(m) The commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section. The rules and regulations to be promulgated by the commissioner may provide for exceptions whereby a special license plate will not be issued if the issuance of the plate would adversely affect public safety. (Code 1981, § 40-2-60.1, enacted by Ga. L. 1997, p. 1559, § 2; Ga. L. 1998, p. 1179, § 12B; Ga. L. 2000, p. 951, § 3-10; Ga. L. 2002, p. 1215, § 3; Ga. L. 2005, p. 1159, § 1/SB 168; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2007, p. 180, § 1/HB 457; Ga. L. 2010, p. 9, § 1-70/HB 1055; Ga. L. 2012, p. 1070, § 3/SB 293; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2012 amendment, effective July 1, 2012, in subsection (d), in the first sentence, substituted “benefitted” for “benefited”, and substituted the present last sentence for the former last sentence, which read: “Spaces for county name labels are required for license plates authorized under this Code section unless expressly eliminated by the request of the agency, fund, or nonprofit corporation sponsoring a special license plate at the time the license plate is designed”. See editor’s note for applicability.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised lan-

guage in the first sentence of subsection (d).

Editor’s notes. — Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, renumbered former Code Section 40-2-60.1 as present Code Section 40-2-61.

Ga. L. 1997, p. 1559, § 5, not codified by the General Assembly, provides that no special license plate shall be issued under that Act prior to January 1, 1998.

Ga. L. 2012, p. 1070, § 4/SB 293, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to license plates issued on or after such date.”

40-2-61. Special license plates for U.S. Senators and Congressmen, Governor, Lieutenant Governor, Speaker of House of Representatives, Justices of Supreme Court, and Judges of Court of Appeals.

The commissioner shall design and issue distinctive license plates to each United States Senator and Congressman elected from the State of Georgia, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and each Justice of the Supreme Court and each Judge of the Court of Appeals to be placed on such official’s personal motor vehicle. Each such distinctive license plate shall indicate the individual’s elected office and no county name decal need be affixed to such plate. The special license plate authorized by this Code section shall be issued to such elected official upon application and payment of a manufacturing fee of \$25.00 and upon compliance with the state laws relating to registration and licensing of motor vehicles and shall be transferred as provided in Code Section 40-2-80. Distinctive license plates issued pursuant to this Code section shall be renewed

annually, and revalidation decals shall be issued upon compliance with the laws relating to registration and licensing and upon payment of an additional registration fee of \$35.00 which shall be collected by the county tag agent at the time for collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. (Code 1981, § 40-2-60.1, enacted by Ga. L. 1989, p. 1186, § 2; Ga. L. 1990, p. 1902, § 1; Code 1981, § 40-2-61, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 4.1; Ga. L. 1997, p. 419, § 14; Ga. L. 2010, p. 9, § 1-71/HB 1055.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-62. Special license plates for members of General Assembly.

The commissioner shall mail special and distinctive license plates printed for members of the General Assembly and former members of the General Assembly who are hereby deemed to have emeritus status after having served in the General Assembly eight or more years to the local tag agent in the counties wherein such members or former members reside on or before the owner's registration period each year. Such special and distinctive license plates shall be issued only upon applications made to the local tag agent and payment of a \$25.00 manufacturing fee. License plates may be issued by the local tag agent upon a proper application and in accordance with the terms of this chapter. License plates issued pursuant to this Code section need not contain a place for the county name decal, and no county name decal need be affixed to a license plate issued pursuant to this Code section. Special and distinctive license plates issued pursuant to this Code section shall be renewed annually, and revalidation decals shall be issued upon compliance with the laws relating to registration and licensing and upon payment of an additional registration fee of \$35.00 which shall be collected by the county tag agent at the time for collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The special license plates issued pursuant to this Code section shall be transferred to another vehicle as provided in Code Section 40-2-80. (Ga. L. 1968, p. 1216, § 1; Code 1981, § 40-2-61; Ga. L. 1986, p. 1333, § 3; Code 1981, § 40-2-62, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 4.1; Ga. L. 1995, p. 809, § 7; Ga. L. 1997, p. 419, § 15; Ga. L. 2010, p. 9, § 1-72/HB 1055; Ga. L. 2013, p. 265, § 1/SB 121.)

The 2013 amendment, effective July 1, 2013, in the first sentence, inserted "and former members of the General Assembly who are hereby deemed to have emeritus status after having served in the General Assembly eight or more years" in

the middle and inserted “or former members” near the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: “Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act.” The act became effective January 1, 1997.

Ga. L. 2013, p. 265, § 4/SB 121, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall only apply to members of the General Assembly who have eight or more years of service as of December 31, 2013.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-63. Special license plates for sheriffs.

The commissioner shall mail to the local tag agents special and distinctive license plates for the elected sheriffs in the counties of this state on or before the owner’s registration period of each sheriff. The sheriffs shall make application with the local tag agent and shall pay a fee of \$25.00. Special sheriffs’ license plates issued pursuant to this Code section shall be renewed annually, and revalidation decals shall be issued upon compliance with the laws relating to registration and licensing and upon payment of an additional registration fee of \$25.00 which shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. License plates shall be issued by the local tag agents upon proper application and in accordance with the terms of Article 2 of this chapter. Only one special and distinctive license plate shall be issued to each elected sheriff; however, a sheriff may choose to use the sheriff’s distinctive license plate either on the law enforcement vehicle assigned to such sheriff or on his or her personal vehicle. (Ga. L. 1978, p. 1530, § 1; Code 1981, § 40-2-62; Ga. L. 1985, p. 261, § 2; Ga. L. 1990, p. 159, § 2; Code 1981, § 40-2-63, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 5; Ga. L. 1995, p. 809, § 8.)

Editor’s notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: “Any local law enacted pursuant to Code Section 40-2-21, which is in

conflict with the provisions of this Act shall stand repealed on the effective date of this act.” The act became effective January 1, 1997.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 282.

40-2-64. Honorary consuls’ license plates.

(a) Honorary consuls, upon application and compliance with the state motor vehicle laws relative to the registration and licensing of motor vehicles, payment of the regular license fees for license plates as provided by law, payment of a manufacturing fee of \$25.00, and

payment of an additional annual registration fee of \$25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted as provided in Code Section 40-2-34, shall be issued license plates as prescribed in Code Section 40-2-31 in duplicate for use on their official or private passenger automobiles. Such license plates shall be fastened to both the front and the rear of the vehicle. No more than two sets of honorary consular corps license plates shall be issued to any country. Such plates shall not be used by any person after his or her appointment has ended.

(b) License plates issued under this Code section shall not be transferred so as to be used by any person other than the person to whom such plate was originally issued but shall be transferred to another vehicle as provided in Code Section 40-2-80.

(c) The commissioner is authorized to establish procedures and promulgate rules and regulations for carrying out this Code section. (Ga. L. 1976, p. 215, §§ 2-4; Code 1981, § 40-2-63; Ga. L. 1985, p. 261, § 3; Code 1981, § 40-2-64, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1998, p. 1179, § 13.)

40-2-64.1. Foreign Organization license plates.

(a) In accordance with the Taiwan Relations Act as provided for in Code Section 50-1-2, the commissioner shall design a distinctive Foreign Organization license plate.

(b) Upon application and compliance with the state motor vehicle laws relating to the registration and licensing of motor vehicles and the payment of any registration fees, including the \$25.00 manufacturing fee and the \$35.00 special license plate fee or the \$35.00 special license plate renewal fee, as applicable, official representatives of the Taipei Economic and Cultural Representatives Office in the United States who maintain a presence in Georgia shall be issued Foreign Organization license plates as prescribed in Code Section 40-2-31 in duplicate. Such license plates shall be fastened to both the front and the rear of the vehicle.

(c) Official representatives of the Taipei Economic and Cultural Representatives Office in Atlanta accredited by the Georgia Department of Economic Development shall be entitled to Foreign Organization license plates for the representative's privately owned motor vehicle. Such license plates shall not be used by any representative after his or her presence in Georgia has terminated.

(d) License plates issued under this Code section shall not be transferred so as to be used by any person other than the person to whom such plates were originally issued but shall be transferred to another vehicle as provided in Code Section 40-2-80.

(e) The commissioner is authorized to establish procedures and promulgate rules and regulations for implementing this Code section. (Code 1981, § 40-2-64.1, enacted by Ga. L. 2005, p. 334, § 14-4/HB 501; Ga. L. 2010, p. 9, § 1-73/HB 1055.)

40-2-65. Special license plates for members of active reserve components of the United States.

(a)(1) Motor vehicle owners who are assigned or attached members of troop program units of any branch of the active reserve components of the United States inside or outside the State of Georgia shall be eligible to receive free motor vehicle license plates for private passenger cars, motorcycles, or trucks used for personal transportation. Motor vehicle owners who are members of any National Guard unit in a state adjoining the State of Georgia and for whom there is no National Guard unit in the county of their residence shall be eligible to receive free motor vehicle plates for private passenger cars, motorcycles, or trucks used for personal transportation to identify such vehicle owner as a reservist. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter. No person shall be entitled to more than one free motor vehicle license plate for any calendar year; provided, however, that, upon payment of the regular license fee provided for in Code Section 40-2-151 and a manufacturing fee of \$25.00, a reservist shall be entitled to receive one additional such license plate. For each additional license plate for which an initial \$25.00 fee was required, there shall be an additional annual registration fee of \$25.00, which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. Additional words or symbols in addition to numbers and letters prescribed by law shall be inscribed upon such license plates so as to identify distinctively the owner as a member of one of the following branches of the United States military reserve: Army, Navy, Marines, Air Force, or Coast Guard. The commanding officer of each active reserve component program unit or the adjutant general of the National Guard unit of each neighboring state shall, upon request of any reserve member or National Guard member of that unit, respectively, furnish to that member approved documentation supporting the member's current membership in the respective reserve or National Guard unit. This documentation shall be presented annually to the tax commissioner of the county in which the reserve member or National Guard member applies for the special license plate under this Code section and upon subsequent reregistration for each succeeding year.

(2) Motor vehicle owners who are retired from any branch of the active reserve components whose active reservists are eligible to

obtain free motor vehicle license plates under paragraph (1) of this subsection, upon application for license plates and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed under Article 2 of this chapter, shall be issued, free of charge, a license plate as prescribed in that article for private passenger cars, motorcycles, or trucks used for personal transportation. Each such retired member shall be entitled to no more than one such free plate for any calendar year; provided, however, that, upon payment of the regular license fee provided for in Code Section 40-2-151 and a manufacturing fee of \$25.00, a retired member shall be entitled to receive one additional such license plate. For each additional license plate for which an initial \$25.00 fee was required, there shall be an additional annual registration fee of \$25.00, which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The license plates issued pursuant to this paragraph shall, in addition to the numbers and letters prescribed by law, be identical to those issued pursuant to paragraph (1) of this subsection to members of the branch of the active reserve component from which that person retired. The commanding officer of each active reserve component program unit shall, upon request of any retired reserve member from that unit, furnish to that retired member approved documentation supporting the retired member's current retired membership status from that reserve unit. This documentation shall be presented to the tax commissioner of the county in which the retired reserve member applies for the special license plate under this Code section.

(b)(1) Upon transfer of the ownership of a private passenger vehicle upon which there is a license plate distinctively identifying the owner thereof as a member of one of the components of the United States military reserve, whether the owner is an active or retired reservist, and acquisition by the reservist of another motor vehicle, the license plate issued pursuant to this Code section shall be placed on such newly acquired motor vehicle, and such reservist shall notify the commissioner of such transfer of the license plate to such newly acquired motor vehicle in such manner as the commissioner may prescribe by regulation. No transfer or cancellation fee shall be charged for the transfer of free reservist license plates. There shall be a transfer and cancellation fee of \$5.00 for the transfer of any other reservist license plate.

(2) Should an active reservist who has been issued a license plate or license plates be discharged or otherwise separated, except by retirement, from his or her reserve unit, the immediate commanding officer of such active reservist shall obtain the discharged member's license plate or license plates at the time of the discharge and shall

forward same to the commissioner along with a certificate to the effect that such person has been discharged, and thereupon the commissioner shall issue a regular license plate, at no additional charge, to such former reservist to replace the reservist plate or plates. Should an active reservist enlist or be commissioned after purchasing a regular license plate for his or her current registration period, the commanding officer of the unit in which such person enlists or is commissioned shall likewise secure the regular license plate of such person and return same to the commissioner, along with a certificate to the effect that such person has been enlisted or commissioned in a troop program unit of the reserve components, and the effective date thereof, whereupon the commissioner shall issue a reservist license plate, at no extra charge, to such new member to replace the returned regular plate. Upon such request for a change in plate for a discharged reservist or a newly enlisted reservist, the commanding officer shall furnish such member with a copy of the commanding officer's letter to the commissioner requesting the appropriate change in plate, which copy of such letter may be used by such member pending the issuance of the new plate.

(c) The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, motorcycles and trucks before issuing these plates in lieu of the regular Georgia license plates, and all applications for such plates shall be made to the commissioner. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (b) of this Code section, such plates shall be nontransferable.

(d) The spouse of a member of the active reserve of the United States military who is killed while serving in a combat arena shall continue to be eligible to be issued a distinctive license plate as provided in this Code section so long as such spouse does not remarry. (Ga. L. 1978, p. 2205, §§ 1-3; Code 1981, § 40-2-64; Ga. L. 1989, p. 14, § 40; Code 1981, § 40-2-65, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 6; Ga. L. 1992, p. 2785, § 1; Ga. L. 1992, p. 3311, § 1; Ga. L. 1995, p. 809, § 9; Ga. L. 1996, p. 1118, § 6; Ga. L. 1997, p. 419, § 16; Ga. L. 2000, p. 830, § 1; Ga. L. 2002, p. 838, § 2; Ga. L. 2002, p. 1074, § 5; Ga. L. 2006, p. 803, § 2/SB 538.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, a comma was inserted following “motorcycles” in the second sentence in paragraph (a)(1) and in the first sentence in paragraph (a)(2).

Editor's notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: “Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date

of this Act." The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act

shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act."

Administrative rules and regulations. — Free United States Military Reserve Tags, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-29.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-66. Special license plates for members of Georgia National Guard.

(a)(1) Motor vehicle owners who are members of the Georgia National Guard, upon application for license plates and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed under Article 2 of this chapter, shall be issued, free of charge, a license plate, as prescribed in that article for private passenger cars, motorcycles, or trucks used for personal transportation. Each member of the Georgia National Guard shall be entitled to no more than one such free plate at a time; provided, however, that, upon payment of the regular license fee provided for in Code Section 48-10-2 and a manufacturing fee of \$25.00, a member shall be entitled to one additional such license plate. For each additional license plate for which an initial \$25.00 fee was required, there shall be an additional annual registration fee of \$25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. Additional words or symbols, in addition to the numbers and letters prescribed by law, shall be inscribed upon such license plates so as to identify distinctively the owner as a member of the Georgia National Guard. The adjutant general of Georgia shall, upon request of any member of that National Guard unit, furnish to that member approved documentation supporting the member's current membership in that National Guard unit. This documentation shall be presented annually to the tax commissioner of the county in which the National Guard member applies for the special license plate under this Code section and upon subsequent reregistration for each succeeding year.

(2) Motor vehicle owners who are retired members of the Georgia National Guard, upon application for license plates and upon compliance with the state motor vehicle laws relating to registration and

licensing of motor vehicles as prescribed under Article 2 of this chapter, shall be issued, free of charge, a license plate as prescribed in that article for private passenger cars, motorcycles, or trucks used for personal transportation. Each retired member of the Georgia National Guard shall be entitled to no more than one such free plate at a time; provided, however, that, upon payment of the regular license fee provided for in Code Section 48-10-2 and a manufacturing fee of \$25.00, a member shall be entitled to one additional such license plate. For each additional license plate for which an initial \$25.00 fee was required, there shall be an additional annual registration fee of \$25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The license plates issued pursuant to this paragraph shall, in addition to the numbers and letters prescribed by law, be identical to those issued pursuant to paragraph (1) of this subsection. The adjutant general of Georgia shall, upon request of any member retired from that National Guard unit, furnish to that retired member approved documentation supporting the member's retired membership status in that National Guard unit. This documentation shall be presented annually to the tax commissioner of the county in which the retired National Guard member applies for the special license plate under this Code section and upon subsequent reregistration for each succeeding year.

(b) Upon transfer of the ownership of a private passenger vehicle upon which there is a license plate bearing the words "National Guard" and acquisition by the member or retired member of the National Guard of another motor vehicle, the license plate issued pursuant to this Code section shall be placed on such newly acquired motor vehicle and such member or retired member shall notify the commissioner of such transfer of the license plate to such newly acquired motor vehicle in such manner as the commissioner may prescribe by regulation and shall pay a transfer and cancellation fee of \$5.00 and shall also pay license fees in an amount, if any, that the license fee for the newly acquired vehicle exceeds the license fee of the original vehicle. No transfer or cancellation fee shall be charged for the transfer of free National Guard license plates. There shall be a transfer and cancellation fee of \$5.00 for the transfer of any other National Guard license plate. Should a member of the National Guard who has been issued a National Guard license plate be discharged or otherwise separated except by retirement from the National Guard, the immediate commanding officer of such member shall obtain the discharged member's National Guard license plate or plates at the time of the discharge and shall forward same to the commissioner along with a certificate to the effect that such member has been discharged, and thereupon the

commissioner shall issue a regular license plate or plates, at no additional charge, to such former National Guard member to replace the National Guard plate. Should a member of the National Guard enlist or be commissioned in the National Guard after purchasing a regular license plate for the current year, the commanding officer of the unit in which such member enlists or is commissioned shall likewise secure the regular license plate of such new member and return same to the commissioner, along with a certificate to the effect that such new member has been enlisted or commissioned in the National Guard and the effective date thereof, whereupon the commissioner shall issue a National Guard license plate, at no extra charge, to such new member to replace the returned regular plate. Upon such request for a change in plate for a discharged member of the National Guard or a newly enlisted member of the National Guard, the commanding officer shall furnish such member with a copy of the commanding officer's letter to the commissioner requesting the appropriate change in plate, which copy of such letter may be used by such member pending the issuance of the new plate.

(c) The commissioner shall furnish to the sheriff of each county in the state an alphabetical arrangement of the list of names, addresses, and license plate letters of each person to whom a license plate is issued under this Code section, and it shall be the duty of the sheriffs of the state to maintain and to keep current such lists for public information and inquiry.

(d) The commissioner shall make such rules and regulations as necessary to enforce compliance with all state license laws relating to the use and operation of a private passenger car before issuing National Guard plates in lieu of the regular Georgia license plates, and all applications for such plates shall be made to the commissioner. The commissioner is specifically authorized to make all rules and regulations necessary to make adequate provision for instances where such vehicles have been transferred or sold. Except as provided in subsection (b) of this Code section, such plates shall be nontransferable.

(e) The spouse of a member of the National Guard who is killed while serving in a combat arena shall continue to be eligible to be issued a distinctive license plate as provided in this Code section so long as such spouse does not remarry. (Ga. L. 1953, Nov.-Dec. Sess., p. 57, §§ 1-4; Ga. L. 1958, p. 642, § 2; Ga. L. 1973, p. 457, § 1; Ga. L. 1977, p. 593, § 1; Code 1981, § 40-2-65; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 854, § 2; Ga. L. 1989, p. 14, § 40; Code 1981, § 40-2-66, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 7; Ga. L. 1993, p. 1260, § 3; Ga. L. 1994, p. 1848, § 1; Ga. L. 1995, p. 809, § 10; Ga. L. 1996, p. 1118, § 7; Ga. L. 1997, p. 419, § 17; Ga. L. 2000, p. 830, § 2; Ga. L. 2006, p. 803, § 3/SB 538.)

Cross references. — Organized militia, T. 38, C. 2, A. 1, P. 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was deleted following “paragraph” in the fourth sentence of paragraph (a)(2).

Pursuant to Code Section 28-9-5, in 2001, a comma was inserted following “motorcycles” in the first sentence of paragraph (a)(1) and “motorcycles, or” was substituted for “motorcycle or” in the first sentence of paragraph (a)(2).

Editor’s notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: “Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act.” The act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified

by the General Assembly, provides: “Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed.”

Administrative rules and regulations. — Free National Guard License Plate, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-24.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-67. Special license plates for state commanders of nationally chartered veterans’ organizations.

(a) The state commanders of nationally chartered veterans’ organizations, upon application and compliance with the state motor vehicle laws relative to the registration and licensing of motor vehicles, upon payment of the regular license fees for license plates as provided by law, and upon the payment of an additional initial fee of \$25.00 and an additional annual registration fee of \$25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted as provided in Code Section 40-2-34, shall be issued license plates as prescribed in Code Section 40-2-31 for use on their official or private passenger automobiles, upon which, in lieu of the numbers prescribed by said Code section, shall be such figures or symbols indicative of the office held by such individuals as may be prescribed by the commissioner.

(b) License plates issued under this Code section may not be transferred so as to be used by any person other than the person to whom such plate was originally issued but shall be transferred to another vehicle as provided in Code Section 40-2-80, except that such plates shall not be used by any person after vacating the office of commander of any of the organizations enumerated in this Code section. (Ga. L. 1960, p. 3; Code 1981, § 40-2-66; Ga. L. 1985, p. 261, § 4; Code 1981, § 40-2-67, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 8; Ga. L. 1994, p. 413, § 1; Ga. L. 1996, p. 1118, § 8; Ga. L. 1997, p. 419, § 18.)

Editor's notes. — Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relat-

ing to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-68. Special license plates for Medal of Honor winners.

(a) Motor vehicle owners who have been awarded the Medal of Honor and who are residents of this state, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, shall be issued two distinctive personalized license plates free of charge. Such license plates shall be fastened to both the front and the rear of the vehicle. Such license plates shall be transferred to another vehicle as provided in Code Section 40-2-80. In the event of the death of the person who received the special license plates pursuant to this Code section, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, his or her surviving spouse may retain the special license plates and continue to display such plates on the vehicle.

(b) The commissioner may begin issuing distinctive personalized license plates to such Medal of Honor winners for the year 1980 and thereafter.

(c) The commissioner is authorized and directed to design the license plate, establish procedures, and promulgate rules and regulations to effectuate the purposes of this Code section. (Ga. L. 1979, p. 887, §§ 2-4; Code 1981, § 40-2-67; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-68, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 1118, § 9; Ga. L. 1997, p. 419, § 19; Ga. L. 1998, p. 1179, § 14; Ga. L. 2005, p. 1159, § 2/SB 168.)

Cross references. — Tax exemption for veterans awarded Medal of Honor, § 48-5-478.3.

Editor's notes. — Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending

Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-69. Free license plates and revalidation decals for certain disabled veterans.

(a) Any veteran who was discharged under honorable conditions and who served on active duty in the armed forces of the United States or on active duty in a reserve component of the United States, including the National Guard, shall, upon application therefor, be issued a free motor vehicle license plate upon presentation of proof that such veteran is receiving or that he or she is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

- (1) Loss or permanent loss of use of one or both feet;
- (2) Loss or permanent loss of use of one or both hands;
- (3) Loss of sight in one or both eyes; or

(4) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye.

(b) Any veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being 100 percent totally disabled and entitled to receive service connected benefits shall, upon application therefor, be issued a free motor vehicle license plate upon presentation of proof that he or she is receiving or that he or she is entitled to receive benefits for a 100 percent service connected disability, as long as he or she is 100 percent disabled. A veteran who claims that such 100 percent total disability is permanent shall furnish proof of such permanent disability through a letter from the United States Department of Veterans Affairs.

(c)(1) Once a veteran has established his or her eligibility to receive free motor vehicle license plates as a result of being permanently disabled, he or she shall be entitled to receive free plates or free revalidation decals in succeeding years on any automobile, private passenger pickup truck, motorcycle, station wagon, or van type vehicle of three-quarter tons or less that he or she may own or jointly with his or her spouse own or acquire in the future.

(2) Once a veteran has established his or her eligibility to receive free motor vehicle license plates as a result of having a 100 percent total disability which has not been determined to be a permanent disability, he or she shall be entitled to receive free plates or free revalidation decals in succeeding years upon furnishing, on an annual basis, proof of such 100 percent disability through a letter

from the United States Department of Veterans Affairs. Such free plates or free revalidation decals shall apply to any automobile, private passenger pickup truck, motorcycle, station wagon, or van type vehicle of three-quarter tons or less that he or she may own or jointly with his or her spouse own or acquire in the future.

(3)(A) Two license plates or revalidation decals each year shall be furnished for vehicles other than motorcycles to veterans qualifying under this Code section unless the originals are lost. Such plates shall be fastened to both the front and the rear of the vehicle.

(B) One license plate or revalidation decal each year shall be furnished for motorcycles to veterans qualifying under this Code section unless the original is lost. Such plate shall be fastened to the rear of the vehicle.

(4) In the event of the death of the person who received the special license plates pursuant to this Code section, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, his or her surviving spouse may continue to receive the free special license plates and revalidation decals until the death of the surviving spouse. (Ga. L. 1956, p. 336, § 1; Ga. L. 1957, p. 69, § 1; Ga. L. 1959, p. 349, § 1; Ga. L. 1961, p. 554, § 1; Ga. L. 1965, p. 325, § 1; Ga. L. 1968, p. 1211, § 1; Ga. L. 1970, p. 315, § 1; Ga. L. 1970, p. 316, § 1; Ga. L. 1975, p. 720, § 1; Code 1981, § 40-2-68; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 45, § 1; Code 1981, § 40-2-69, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 1498, § 1; Ga. L. 1994, p. 393, §§ 1, 2; Ga. L. 1997, p. 1559, § 3; Ga. L. 2007, p. 668, § 1/SB 81.)

Cross references. — Veterans', honorary, and distinctive drivers' licenses, § 40-5-36.

Administrative rules and regulations. — Free Veterans License Plate,

Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-27.

OPINIONS OF THE ATTORNEY GENERAL

Qualifications for vehicle exemption. — For disabled veteran to be entitled to vehicle exemption, veteran's dis-

ability must be service connected. 1979 Op. Att'y Gen. No. 79-19.

40-2-70. Special license plates for disabled veterans not qualifying under Code Section 40-2-69.

(a) Any citizen and resident of the State of Georgia who has been discharged from the armed forces under conditions other than dishonorable or who is currently serving in the armed forces, who is disabled to any degree specified and enumerated in Code Section 40-2-69, and who is the owner of a private passenger motor vehicle, but who cannot

qualify under Code Section 40-2-69, shall be entitled to a special and distinctive automobile license plate. Such license plate shall be transferred to another vehicle acquired by such veteran or jointly by such veteran and his or her spouse as provided in Code Section 40-2-80. Such veteran shall be entitled to such plate regardless of whether he or she is suffering from a service connected or nonservice connected disability.

(b) Such veteran must apply for such license plate and, upon compliance with the state motor vehicle laws for licensing of motor vehicles and without payment of the regular license fee for plates as prescribed under Article 7 of this chapter, such veteran shall be issued similar license plates as prescribed in Code Section 40-2-71 for private passenger cars. There shall be no charge for the additional plate issued such veteran under this Code section. There shall be no charge for revalidation decals for such plates.

(c) If a veteran has not been certified as disabled by the United States Department of Veterans Affairs, such veteran may submit to the Department of Veterans Service such veteran's discharge papers and a certified statement from a physician, licensed under Chapter 34 of Title 43, certifying that in the opinion of such physician such veteran is disabled to a degree enumerated in Code Section 40-2-69. If the certificate from the physician indicates the qualifying disabilities which meet the standards of the United States Department of Veterans Affairs, the commissioner of veterans service shall submit a letter to the state revenue commissioner indicating that the veteran meets the requirements of this Code section and qualifies for a special license plate as provided in this Code section. (Ga. L. 1967, p. 539, § 1; Code 1981, § 40-2-69; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-70, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 467, § 1; Ga. L. 1996, p. 1118, § 10; Ga. L. 1997, p. 419, § 20; Ga. L. 1998, p. 1179, § 15; Ga. L. 2000, p. 951, § 3-11; Ga. L. 2002, p. 1074, § 6; Ga. L. 2005, p. 334, § 14-5/HB 501; Ga. L. 2012, p. 155, § 2/HB 732.)

The 2012 amendment, effective July 1, 2012, designated the existing provisions of this Code section as subsections (a) through (c); inserted "or who is currently serving in the armed forces" in the first sentence of subsection (a); and, in subsection (b), inserted "without" in the first sentence, and added the third sentence.

Editor's notes. — Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and

licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act."

Law reviews. — For article comment-

ing on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-71. Design of disabled veteran plates; restrictions on issuance and transfer.

(a) The commissioner is directed to furnish the license plates provided for in Code Sections 40-2-69 and 40-2-70. Such plates shall be printed in three colors: red, white, and blue. The commissioner is authorized and directed to design the license plate. Each plate shall contain, in bold characters, the name of the state, or abbreviation thereof, the year, the serial number, either the words "Disabled Veteran" or "Disabled Vet," and an image of the International Symbol of Access which is at least one inch in height and is white on a blue background.

(b) Such license plates so issued shall be transferred to another vehicle as provided in Code Section 40-2-80.

(c) No disabled veteran shall be entitled to own or operate more than one vehicle with the free license plates provided by Code Sections 40-2-69, 40-2-70, and this Code section. (Ga. L. 1956, p. 336, §§ 2, 3, 5; Ga. L. 1957, p. 69, § 2; Ga. L. 1959, p. 349, § 2; Code 1981, § 40-2-70; Ga. L. 1990, p. 1476, § 1; Code 1981, § 40-2-71, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 6, § 40; Ga. L. 1996, p. 1118, § 11; Ga. L. 1997, p. 419, § 21; Ga. L. 1998, p. 1179, § 16; Ga. L. 2012, p. 155, § 3/HB 732.)

The 2012 amendment, effective July 1, 2012, substituted "number, either the words 'Disabled Veteran' or 'Disabled Vet,' and an image of the International Symbol of Access which is at least one inch in height and is white on a blue background" for "number, and either the words 'Disabled Veteran' or 'Disabled Vet'" in the last sentence of subsection (a).

Editor's notes. — Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of

Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-71.1. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, redesignated

former Code Section 40-2-71.1 as present Code Section 40-2-73.

40-2-72. Penalty for violation of Code Sections 40-2-69 through 40-2-71.

Any person evading or violating any provision of Code Sections 40-2-69 through 40-2-71 or attempting to secure benefits under those Code sections to which he is not entitled shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than five years. (Ga. L. 1956, p. 336, § 6; Ga. L. 1957, p. 69, § 6; Code 1981, § 40-2-71; Code 1981, § 40-2-72, as redesignated by Ga. L. 1990, p. 2048, § 2.)

RESEARCH REFERENCES

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 ALR 374.

40-2-73. Special license plates for former prisoners of war.

(a) As used in this Code section, the term “prisoners of war” means those veterans of the armed forces of the United States who were discharged under honorable conditions and who were captured and held prisoner by forces hostile to the United States while serving in the armed forces of the United States in World War I, World War II, the Korean War, or the Vietnam War.

(b) Owners of motor vehicles who are veterans of the armed forces of the United States, who have been prisoners of war, who were discharged under honorable conditions, and who are residents of this state, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, shall be issued one distinctive personalized license plate free of charge and, upon the payment of the appropriate taxes and registration fees, shall be issued additional distinctive personalized license plates. Such license plates shall be transferred to another vehicle acquired by such person individually or jointly with his or her spouse as provided in Code Section 40-2-80. Such license plates shall be fastened to the rear of the vehicles.

(c) The spouse of a deceased former prisoner of war shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section so long as such person does not remarry.

(d) The commissioner is authorized and directed to design the license plate, establish procedures, and promulgate rules and regulations to effectuate the purposes of this Code section.

(e) The commissioner may begin issuing distinctive personalized license plates to such prisoners of war for the year 1982 and thereafter. (Ga. L. 1981, p. 516, §§ 1-5; Code 1981, § 40-2-71.1; Ga. L. 1984, p. 423,

§ 1; Ga. L. 1985, p. 1278, § 2; Ga. L. 1986, p. 626, § 1; Code 1981, § 40-2-73, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 1118, § 12; Ga. L. 1997, p. 419, § 22; Ga. L. 1998, p. 1179, § 17.)

Cross references. — Veterans', honorary, and distinctive drivers' licenses, § 40-5-36.

Editor's notes. — Ga. L. 1996, p. 1118, § 17, not codified by the General Assembly, provides: "Any local Act enacted pursuant to Code Section 40-2-21 which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act; provided, however, that any local Act enacted in 1996 pursuant to the provisions of Code Section 40-2-21 as enacted by Act. No. 385, Ga. L. 1995, which local Act provides for a four-month staggered registration period for a county, shall not be repealed by the provisions of this Act, but the registration period for such county shall be as provided by subparagraph (a)(1)(B) of Code Section

40-2-21 as enacted by this Act and not as provided in such local Act."

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 188, 284, 285.

40-2-74. Special license plates for persons with disabilities.

(a) Any owner of a private passenger motor vehicle who is a resident of Georgia, upon complying with the motor vehicle laws relating to registration, licensing, and payment of fees and upon submitting an affidavit of a practitioner of the healing arts stating that the owner or his or her spouse, child, or ward is a person with disabilities, as defined in paragraph (5) of Code Section 40-6-221, whose disability or incapacity can be expected to last for more than 180 days and stating the specific disability that limits or impairs the ability to walk, shall be issued a specially designated disabled person's license plate from the commissioner. As used in this Code section, the term "practitioner of the healing arts" means a person holding a license to practice medicine, podiatric medicine, or chiropractic issued pursuant to Article 2 of Chapter 34 of Title 43, Chapter 35 of Title 43, or Chapter 9 of Title 43, respectively.

(a.1) Any business registered in Georgia that is a sole proprietorship, a Subchapter "S" Corporation under Subchapter S of Chapter 1 of the Internal Revenue Code, or a single principal limited liability corporation or limited liability partnership which assigns or makes available a passenger motor vehicle for the use of an employee of such business,

upon complying with the motor vehicle laws relating to registration, licensing, and payment of fees and upon submitting an affidavit of a practitioner of the healing arts stating that such employee is a person with disabilities, as defined in paragraph (5) of Code Section 40-6-221, whose disability or incapacity can be expected to last for more than 180 days and stating the specific disability that limits or impairs the ability to walk, shall be issued a specially designated disabled person's license plate from the commissioner. The affidavit shall also state that such business vehicle shall be used only or primarily by such disabled employee. If such disabled employee leaves the employment of the company, the company shall surrender the plate to the commissioner within 60 days. In the event that an employee or other person that is not a disabled person uses a business vehicle which has been issued a special plate pursuant to this subsection, he or she shall not avail himself or herself of the privileges afforded under this title to a disabled person with a special plate. Any person who is not a disabled person as prescribed by this Code section and who willfully and falsely avails himself or herself of the privileges afforded to such special plate under this title shall be guilty of a misdemeanor. Any business to which one or more special plates are issued pursuant to this subsection which is determined by the commissioner to have repeated violations of this subsection by an employee or employees or other person or persons that are not disabled as prescribed by this Code section shall be subject to revocation of such special plate or plates.

(b) A hearing impaired person otherwise qualified under this subsection shall be eligible to have issued to him or her a specially designated disabled person's license plate in accordance with this Code section. As used in this Code section, "hearing impaired person" shall have the same meaning as defined in Code Section 24-6-651, except that the term "hearing impaired person" shall not include any person who is not qualified for a driver's license pursuant to Code Section 40-5-35. For purposes of this subsection, presentation of an identification card for persons with disabilities issued pursuant to Article 8 of Chapter 5 of this title shall constitute proof of hearing impairment.

(c) Upon complying with the motor vehicle laws relating to registration, licensing, and payment of fees and upon submission of proof of disability as provided in subsection (a) of this Code section, as applicable:

(1) Any resident person who is the joint owner of a motor vehicle with a disabled person as prescribed in this Code section shall be authorized to obtain such specialized plates for such jointly owned vehicle; and

(2) Any resident motor vehicle owner who is the spouse, parent, or legal guardian of a person who is disabled as prescribed in this Code

section shall be authorized to obtain such specialized plates for such vehicle.

Upon the death of the disabled person or if the joint ownership of such vehicle ceases for any reason, the specialized license plate shall be canceled and the owner of such motor vehicle shall be issued a regular license plate for such vehicle.

(d) The commissioner is directed to furnish such license plates as provided for in this Code section, which shall bear the official international wheelchair symbol or a reasonable facsimile thereof, or such other symbols as the commissioner may deem appropriate.

(e) Any license plate issued pursuant to the provisions of this Code section shall be transferred to another vehicle as provided in Code Section 40-2-80.

(f) Any person who is not a disabled person as prescribed in this Code section or a person otherwise entitled to obtain such special license plates and who willfully and falsely represents himself or herself as having the qualifications to obtain the special plates prescribed by this Code section shall be guilty of a misdemeanor.

(g) Any practitioner of the healing arts who knowingly and willfully makes a false or misleading statement in his or her affidavit stating that an applicant is a disabled person as prescribed in this Code section shall be guilty of a misdemeanor.

(h) Any person owning a vehicle bearing the special plates and not entitled to do so under this Code section shall be guilty of a misdemeanor. (Ga. L. 1973, p. 576, §§ 2-5; Ga. L. 1978, p. 1653, § 1; Code 1981, § 40-2-72; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 1186, § 3; Code 1981, § 40-2-74, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1994, p. 413, §§ 2, 3; Ga. L. 1995, p. 1302, § 6; Ga. L. 1996, p. 1118, § 13; Ga. L. 1997, p. 419, § 23; Ga. L. 1998, p. 1179, § 18; Ga. L. 2000, p. 1182, § 1; Ga. L. 2005, p. 1159, § 3/SB 168; Ga. L. 2008, p. 286, § 1/SB 517; Ga. L. 2011, p. 99, § 56/HB 24.)

Cross references. — Handicapped persons, T. 30.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, “pursuant to Article 8” was substituted for “pursuant Article 8” in the last sentence of subsection (b).

Pursuant to Code Section 28-9-5, in 2008, “person” was deleted following “are not disabled” in the last sentence of subsection (a.1).

Editor’s notes. — Ga. L. 1996, p. 1118, § 18, not codified by the General Assem-

bly, provides: “Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed.”

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, pro-

vides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Administrative rules and regulations. — Disabled Persons License Plates, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-26.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997). For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 735 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, § 634 et seq.

61 C.J.S., Motor Vehicles, § 956 et seq.

40-2-74.1. Special decal for persons with disabilities.

(a) The department shall issue parking permits for persons with disabilities and may delegate to county tag agents the responsibility for issuance of such permits to residents of the county served by the tag agent. The department shall receive applications for and issue parking permits by mail to persons with disabilities upon presentation of an affidavit of a licensed doctor of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, or licensed chiropractor stating that such person is a disabled person, the specific disability that limits or impairs the person’s ability to walk, and that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221. Permits shall be in such form as the department prescribes but shall be of sufficient size and sufficiently distinctively marked to be easily visible when placed on or affixed to the driver’s side of the dashboard or hung from the rearview mirror of the parked vehicle. Permits shall be made of a substrate as determined by the commissioner and shall be of sufficient quality to ensure that the coloring of the permit and the ink used thereon will resist fading for a period of at least four years. Permits shall be issued to individuals, and the name of the individual and an identification number shall appear on the permit. The individual to whom a permit is issued may use the permit for any vehicle he or she is operating or in which he or she is a passenger. Permits shall also be issued to institutions when the primary purpose of a vehicle operated by the institution is to transport individuals with disabilities. The name of the institution, the license number of the particular vehicle, and an identification number shall appear on the permit. The institution shall use such permit only for a vehicle which is operated by the institution and which is used primarily to transport individuals with disabilities.

(b) The department shall issue a temporary permit to any temporarily disabled person upon presentation of an affidavit of a licensed doctor

of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, or licensed chiropractor stating that such person is a temporarily disabled person, the specific disability that limits or impairs the person's ability to walk, that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221, and a date until which such person is likely to remain disabled. The temporary permit shall show prominently on its face an expiration date the same as the date specified by such doctor for the likely termination of the disability, which date shall not be more than 180 days after the date the permit is issued. The expiration date shall be printed with permanent ink and in boldface type of sufficient size to be legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror.

(c) The department shall issue a permanent permit to any permanently disabled person upon presentation of an affidavit of a licensed doctor of medicine, licensed doctor of osteopathic medicine, licensed doctor of podiatric medicine, licensed optometrist, or licensed chiropractor stating that such person is a permanently disabled person. The affidavit shall further state the specific disability that limits or impairs the person's ability to walk or that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221. The department shall also issue a permanent permit to an institution which operates vehicles used primarily for the transportation of individuals with disabilities upon presentation of a certification from the institution regarding use of its vehicles. The institution shall receive permits only for the number of vehicles so used and shall affix the permits to the driver's side of the dashboards of such vehicles. The permanent permit shall be predominantly blue in color and shall show prominently on its face an expiration date four years from the date it is issued. The expiration date shall be machine printed, not handwritten, in boldface type of sufficient size to be legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror.

(d) Any individual to whom a specially designated disabled veteran's license plate has been issued pursuant to Code Sections 40-2-69 through 40-2-72 and any individual to whom a specially designated disabled person's license plate has been issued pursuant to Code Section 40-2-74 shall be authorized to park the passenger motor vehicle on which the specially designated license plate is attached in a parking place for persons with disabilities without the necessity of obtaining a parking permit for persons with disabilities pursuant to this Code section.

(e) The department shall issue a special permanent permit to any person who:

- (1) Because of a physical disability drives a motor vehicle which has been equipped with hand controls for the operation of the vehicle's brakes and accelerator; or
- (2) Is physically disabled due to the loss of, or loss of use of, both upper extremities.

This special permanent permit shall be gold in color and shall show prominently on its face an expiration date four years from the date it is issued. The expiration date shall be printed in a size of print that is legible when the permit is displayed on the driver's side of the dashboard or hung from the rearview mirror. Such a special permit shall be used in the same manner as, and shall be subject to the provisions of this Code section relating to, other permanent parking permits for persons with disabilities and shall also be used as provided in Code Section 10-1-164.1. In addition to any other required printing, the following shall be printed upon this special gold permit:

"Code Section 10-1-164.1 of the Official Code of Georgia Annotated requires that any owner or operator of a gasoline station that sells full-service gasoline at one price and self-service at a lower price shall provide the service of dispensing gasoline at the self-service price for the holder of this special permit when such holder requests such service and is the operator of the vehicle and is not accompanied by another person 16 years of age or older who is not mobility impaired or blind."

(f) The department and county tag agents shall not charge or collect any fee for issuing parking permits for persons with disabilities under this Code section.

(g) Any special disabled person decal issued under the former provisions of this Code section shall be valid until its expiration date but shall not be reissued.

(h) For purposes of this Code section, an active duty military physician shall be entitled to submit an affidavit in support of the application of active duty or retired military personnel for parking permits for persons with disabilities whether or not such physician is licensed to practice in Georgia. Such affidavit shall state that the applicant is in active military service and is stationed in Georgia pursuant to military orders or is retired from the military and is a resident of Georgia and that such person is a disabled person, the specific disability that limits or impairs the person's ability to walk, and that he or she is a person with disabilities as specified in paragraph (5) of Code Section 40-6-221.

(i) For purposes of this Code section the department shall accept, in lieu of an affidavit, a signed and dated statement from the doctor which

includes the same information as required in an affidavit written upon security paper as defined in paragraph (38.5) of Code Section 26-4-5. (Code 1981, § 40-2-74.1, enacted by Ga. L. 2005, p. 1159, § 4/SB 168; Ga. L. 2006, p. 659, § 1/HB 1217; Ga. L. 2008, p. 147, § 1/HB 961; Ga. L. 2008, p. 369, § 1/SB 369; Ga. L. 2012, p. 804, § 3/HB 985; Ga. L. 2014, p. 710, § 3-1/SB 298.)

The 2012 amendment, effective July 1, 2012, in subsection (a), substituted “a substrate as determined by the commissioner” for “plastic or heavyweight cardboard” in the fourth sentence, and deleted the former fifth sentence, which read: “The front and back surfaces of the permit shall be laminated to prevent alteration of the information printed underneath on the permit.”; and, in subsection (b), deleted “shall vary in color from one period to the next renewal period and” following

“The temporary permit” at the beginning of the second sentence, and substituted “printed with permanent ink and” for “machine printed, not handwritten,” in the third sentence.

The 2014 amendment, effective July 1, 2014, added subsection (i).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “person who is” was deleted following “permit to any” in the first sentence of subsection (c).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur 2d, Automobiles and Highway Traffic, § 128 et seq. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 820.

C.J.S. — 60 C.J.S., Motor Vehicles, § 62.

40-2-75. Special license plates for amateur radio operators.

Reserved. Repealed by Ga. L. 2010, p. 9, § 1-74/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Ga. L. 1951, p. 653, §§ 1-4; Ga. L. 1970, p. 699, § 1; Code 1981, § 40-2-73; Ga. L. 1982, p. 1075, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 433, § 1; Ga. L. 1985, p. 261, § 5; Ga. L. 1986, p. 1333, § 4; Code 1981, § 40-2-75, as

redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 9; Ga. L. 1994, p. 1848, § 2; Ga. L. 1995, p. 809, § 11; Ga. L. 1996, p. 1118, § 14; Ga. L. 1997, p. 419, § 24; Ga. L. 1998, p. 1179, § 19. For current provisions regarding this license plate, see Code Section 40-2-86.1(l)(6).

40-2-75.1. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, redesignated

former Code Section 40-2-75.1 as former Code Section 40-2-78.

40-2-75.2. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 2, effective July 1, 1990, redesignated former Code Section 40-2-75.2 as former Code Section 40-2-79.

40-2-76 through 40-2-78.

Reserved. Repealed by Ga. L. 2010, p. 9, § 1-74/HB 1055, effective May 12, 2010.

Editor's notes. — These Code sections were based on Ga. L. 1958, p. 302, §§ 1-5; Ga. L. 1977, p. 596, § 1; Ga. L. 1982, p. 2298, §§ 1-4; Ga. L. 1983, p. 3, § 29; Ga. L. 1985, p. 261, § 7; Ga. L. 1986, p. 427, § 1; Ga. L. 1989, p. 921, § 3; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 10; Ga. L. 1992, p. 779, § 11; Ga. L. 1993, p. 1678, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 1853, § 1; Ga. L. 1995, p. 809, § 12; Ga. L. 1997, p. 419, §§ 25-26; Ga. L. 1997, p. 1589, § 2; Ga. L. 1998, p. 1179, § 20-22; Ga. L. 1999, p. 791, § 3; Ga. L. 2000, p. 951, § 3-12; Ga. L. 2003, p. 450, § 3; Ga. L. 2008, p. 832, § 1/HB 1220. For current provisions regarding these license plates, see Code Section 40-2-86.1(l)(7) (alternative fueled vehicles); 40-2-86.1(l)(8) (antique or hobby vehicles); and 40-2-86.1(l)(9) (firefighters).

40-2-79. Leased or rented trailers.

Reserved. Repealed by Ga. L. 1997, p. 419, § 26A, effective May 1, 1997.

Editor's notes. — This Code section was based on Code 1981, § 40-2-75.2 [repealed], enacted by Ga. L. 1987, p. 949, § 3; Code 1981, § 40-2-79, as redesignated by Ga. L. 1990, p. 2048, § 2.

40-2-80. Transfer of special license plates.

Except as otherwise provided by law, the commissioner shall provide by rules and regulations appropriate procedures whereby, upon the payment of the fee prescribed in Code Section 40-2-42 for transfer of license plates and revalidation decals, currently valid special and distinctive license plates and special personalized prestige license plates authorized by this article shall be transferred from one vehicle to another vehicle of the same class of which ownership is acquired following that person's or those persons' ceasing to own or operate on the public roads the vehicle for which such plate was originally issued and during the initial registration period for the acquired vehicle. If the vehicle acquired by such person is of a different class than the vehicle no longer owned or operated by such person, then upon payment by such person of any additional fee for registering such acquired vehicle, the commissioner shall issue a new license plate to such person for use on such vehicle. Special license plates and revalidation decals for such plates may be transferred in accordance with the provisions of this Code section at any time after issuance or renewal thereof and until the expiration of the period for which issued. (Ga. L. 1969, p. 266, § 3; Code 1981, § 40-2-76; Code 1981, § 40-2-80, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 779, § 12; Ga. L. 1997, p. 419, § 27; Ga. L. 1998, p. 1179, § 23.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Cited in *Garner v. State*, 154 Ga. App. 839, 269 S.E.2d 912 (1980).

40-2-81. Reserved.

Reserved. Redesignated as Code Section 40-2-9 by Ga. L. 2001, p. 479, § 3, effective January 1, 2002.

Editor's notes. — Ga. L. 2001, p. 479, § 3, redesignated this Code section as Code Section 40-2-9, effective January 1, 2002. Ga. L. 2001, p. 479, § 4, effective January 1, 2002, reserved the designation of Code Section 40-2-81.

40-2-82. Distinctive license plates for Department of Public Safety and troopers of Georgia State Patrol or law enforcement officers of the Motor Carrier Compliance Division.

The commissioner of public safety shall be issued distinctive license plates to be used on motor vehicles assigned to the Department of Public Safety and operated by troopers of the Georgia State Patrol or law enforcement officers of the Motor Carrier Compliance Division. The distinctive plates shall be issued free of charge in accordance with procedures agreed upon by the commissioner of public safety and the state revenue commissioner. License plates issued pursuant to this Code section need not contain a place for the county name decal and no county name decal need be affixed to a license plate issued pursuant to this Code section. (Code 1981, § 40-2-78, enacted by Ga. L. 1989, p. 1186, § 5; Code 1981, § 40-2-82, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2000, p. 951, § 3-13; Ga. L. 2005, p. 334, § 14-6/HB 501.)

40-2-83. Special or prestige license plates for jointly owned vehicles; surrendering when joint ownership ceases.

(a) Notwithstanding any other provision of law, any resident person who is authorized to obtain a special or prestige license plate pursuant to this article may, upon complying with the motor vehicle laws relating to licensing, registration, and fees, obtain such special or prestige license plate in his or her own name and the name of any other person with whom he or she jointly owns a motor vehicle.

(b) Special or prestige license plates issued pursuant to this article to joint owners shall be transferred to another vehicle having the same joint owners as provided by Code Section 40-2-80.

(c) If any resident person who is authorized to obtain a special or prestige license plate and who has been issued a special or prestige plate for a jointly owned vehicle dies or for any other reason is no longer a joint owner of such vehicle, the surviving owner of such vehicle shall surrender the license plate to the commissioner and shall obtain a regular license plate or some other type of special or prestige license plate upon complying with the motor vehicle laws relating to registration, licensing, and fees. (Code 1981, § 40-2-83, enacted by Ga. L. 1990, p. 2048, § 2; Ga. L. 1992, p. 2978, § 2.1; Ga. L. 1997, p. 419, § 28; Ga. L. 1998, p. 1179, § 24.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-84. License plates for veterans awarded Purple Heart.

(a)(1) Motor vehicle or motorcycle owners who are veterans of the armed forces of the United States who have been awarded the Purple Heart citation shall be eligible to receive a special and distinctive vehicle license plate for a private passenger car, motorcycle, trailer, or truck used for personal transportation, provided that the requisite number of applications is received by the commissioner as provided in subsection (b) of this Code section. Such license plate shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(2) For purposes of this Code section, the term “veteran” shall include a member of the armed forces or reserves who is still serving on active duty after being awarded the Purple Heart citation.

(b) A veteran who qualifies for the special and distinctive license plate pursuant to subsection (a) of this Code section shall make application therefor with the commissioner and include the requisite fee. Said applicant may apply for and be limited to not more than one free license plate at a time; provided, however, that upon payment of the regular license fee provided for in Code Section 40-2-151 and payment of the manufacturing fee provided for in this Code section, a veteran may obtain an additional such license plate. The commissioner shall retain all applications received for such special and distinctive license plate until a minimum of 250 applications have been received. After receipt of 250 applications for such distinctive license plate, the commissioner shall design a distinctive license plate as provided in subsection (c) of this Code section and issue the distinctive license plates to present and future qualifying applicants. If the commissioner does not receive the required minimum 250 applications no later than July 31 of the year preceding the year of issuance of such plates, the commissioner shall not accept any applications for nor issue such

distinctive license plates and all fees shall be refunded to applicants. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, motorcycles, and trucks before issuing these license plates in lieu of the regular Georgia license plates. The manufacturing fee for each additional special and distinctive license plate shall be \$25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (d) of this Code section, such plates shall be nontransferable.

(c) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars, motorcycles, or trucks used for personal transportation. Additional words or symbols, in addition to the numbers and letters prescribed by law, shall be inscribed upon such license plates so as to identify distinctively the owner as a Purple Heart recipient. For any redesigned plates issued on or after January 1, 2006, such inscription shall include the designation "Combat Wounded."

(d) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran of the armed forces of the United States who was awarded the Purple Heart citation shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran's death or acquired thereafter, so long as such person does not remarry.

(e) For each additional special license plate issued under this Code section there shall be an additional \$25.00 annual registration fee which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. (Code 1981, § 40-2-84, enacted by Ga. L. 1990, p. 1316, § 1; Ga. L. 1991, p. 1145, § 2; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 13; Ga. L. 1993, p. 1793, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 564, § 1; Ga. L. 1997, p. 419, § 29; Ga. L. 1998, p. 1179, § 25; Ga. L. 2000, p. 830, § 3; Ga. L. 2002, p. 1074, § 5; Ga. L. 2005, p. 1159, § 5/SB 168; Ga. L. 2012, p. 110, § 1/SB 473; Ga. L. 2012, p. 155, § 4/HB 732.)

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, designated the existing provisions of subsection (a) as paragraph (a)(1); in the first sentence of paragraph (a)(1), inserted

"trailer," and substituted "is received" for "are received"; and added paragraph (a)(2). The second 2012 amendment, effective July 1, 2012, designated the existing provisions of subsection (a) as paragraph

(a)(1); substituted "is" for "are" in paragraph (a)(1); and added and identical paragraph (a)(2).

Cross references. — Purple Heart Day, § 1-4-21. Veterans awarded Purple Heart exempt from ad valorem taxes provided license plate issued under Code Section 40-2-84, § 48-5-478.2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this Code section, which was enacted as Code Section 40-2-75.3, was renumbered as Code Section 40-2-84, and a reference to Code Section 40-2-80 was substituted for a reference to Code Section 40-2-76 in subsection (d).

Editor's notes. — Ga. L. 2002, p. 1074,

§ 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." The act became effective July 1, 2002.

Administrative rules and regulations. — Purple heart recipient license plates, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, § 560-10-22-.07.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-85. License plates for veterans who survived attack on Pearl Harbor.

(a) Motor vehicle owners who are veterans of the armed forces of the United States who survived the Japanese attack on Pearl Harbor on December 7, 1941, shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, trucks, or recreational vehicles used for personal transportation, provided that the requisite number of applications are received by the commissioner as provided in subsection (b) of this Code section. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(b) A veteran who qualifies for the special and distinctive license plate pursuant to subsection (a) of this Code section shall make application therefor with the commissioner and include the requisite fee. The commissioner shall design a distinctive license plate as provided in subsection (c) of this Code section and issue the distinctive license plates to present and future qualifying applicants. There shall be no minimum required number of applicants for such distinctive license plate. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars and trucks before issuing these license plates in lieu of the regular Georgia license plates. The manufacturing fee for such special and distinctive license plates shall be \$25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (d) of this Code section, such plates shall be nontransferable.

(c) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars or

trucks used for personal transportation. Additional words or symbols, in addition to the numbers and letters prescribed by law, shall be inscribed upon such license plates so as to identify distinctively the owner as a survivor of the Japanese attack on Pearl Harbor on December 7, 1941.

(d) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased survivor of the Japanese attack on Pearl Harbor on December 7, 1941, shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran's death or acquired thereafter, so long as such person does not remarry.

(e) Special license plates issued under this Code section shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31. It shall be a requirement that a county name decal shall be affixed and displayed on license plates issued under this Code section.

(f) Any resident motor vehicle owner who is the spouse or legal guardian of a person who is disabled as prescribed in this Code section shall be authorized to obtain such specialized plates for such vehicle. (Code 1981, § 40-2-85, enacted by Ga. L. 1990, p. 797, § 1; Ga. L. 1992, p. 779, § 14; Ga. L. 1994, p. 558, § 1; Ga. L. 1994, p. 564, § 2; Ga. L. 1996, p. 1259, § 1; Ga. L. 1997, p. 419, § 30; Ga. L. 1997, p. 1515, § 1; Ga. L. 1998, p. 1179, § 26.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this Code section, which was enacted as Code Section 40-2-75.4, was renumbered as Code Section 40-2-85, and references to Code Sections 40-2-80 and 40-2-31 were substituted for references to Code Sections 40-2-76 and 40-2-29, respectively, in subsections (d) and (e).

Administrative rules and regula-

tions. — Survivor of Pearl Harbor license plate, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Rule § 560-10-22-.06.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-85.1. Special and distinctive license plates for veterans.

(a) For purposes of this Code section, the term:

(1) "Military medal award" means the following medals, decorations, or other recognition of honor for military service awarded by a branch of the United States military:

(A) Medal of Honor;

(B) Bronze Star Medal;

- (C) Silver Star Medal;
- (D) Distinguished Service Cross;
- (E) Navy Cross;
- (F) Air Force Cross;
- (G) Defense Distinguished Service Medal;
- (H) Homeland Security Distinguished Service Medal;
- (I) Distinguished Service Medal;
- (J) Navy Distinguished Service Medal;
- (K) Air Force Distinguished Service Medal;
- (L) Coast Guard Distinguished Service Medal;
- (M) Defense Superior Service Medal;
- (N) Legion of Merit;
- (O) Distinguished Flying Cross;
- (P) Purple Heart; and
- (Q) Air Medal.

(2) "Served during active military combat" means active duty service in World War I, World War II, the Korean War, the Vietnam War, Operation Desert Storm, the Global War on Terrorism as defined by Presidential Executive Order 13289, Section 2, the war in Afghanistan, or the war in Iraq, which includes either Operation Iraqi Freedom or Operation Enduring Freedom.

(3) "Veteran" means a former member of the armed forces of the United States who is discharged from the armed forces under conditions other than dishonorable.

(b)(1) Motor vehicle and trailer owners who are veterans of the armed forces of the United States, or who have received a military medal award, or persons who served during active military combat shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, trucks, or recreational vehicles used for personal transportation. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(2)(A) Motor vehicle and trailer owners who are veterans or have received a military medal award or served during active military combat shall be issued upon application for and upon compliance with the state motor vehicle laws relating to registration and

licensing of motor vehicles a veteran's license plate, military medal award recipient license plate, or commemorative service license plate for service during active military combat. One such license plate shall be issued without the requisite registration fee, manufacturing fee, or annual registration fee.

(B) Each member or former member of the armed forces listed in this subsection shall be entitled to no more than one such free license plate at a time; provided, however, that upon payment of a manufacturing fee of \$25.00, a member shall be entitled to one additional such license plate. For each additional license plate for which a \$25.00 manufacturing fee is required, there shall be an additional annual registration fee of \$25.00 which fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34.

(c) The commissioner shall design a veteran's license plate, a military medal award recipient license plate, and a license plate to commemorate service with the United States armed forces during active military combat. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, trucks, and trailers before issuing these license plates in lieu of the regular Georgia license plates. The manufacturing fee for such special and distinctive license plates shall be \$25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (e) of this Code section, such plates shall be nontransferable.

(d) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars, trucks, and trailers used for personal transportation. Such plates shall contain such words or symbols, in addition to the numbers and letters prescribed by law, so as to identify distinctively the owners as veterans of the armed forces of the United States, recipients of a military medal award, or persons who served during active military combat and shall additionally identify distinctly the owner as a veteran of one of the following branches of the armed forces: Army, Navy, Marines, Air Force, or Coast Guard.

(e) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran of the armed forces of the United States or of a deceased person who received a military medal award or who served during active military combat shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code

section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran's death or acquired thereafter, so long as such person does not remarry.

(f) Special license plates issued under this Code section, except as provided in subparagraph (b)(2)(A) of this Code section, shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31 without payment of an additional \$25.00 annual registration fee. (Code 1981, § 40-2-85.1, enacted by Ga. L. 1991, p. 1036, § 1; Ga. L. 1992, p. 779, § 15; Ga. L. 1992, p. 2785, § 1.1; Ga. L. 1994, p. 413, § 4; Ga. L. 1994, p. 564, § 3; Ga. L. 1997, p. 419, § 31; Ga. L. 1998, p. 1179, § 27; Ga. L. 2001, p. 479, § 1; Ga. L. 2007, p. 668, § 2/SB 81; Ga. L. 2012, p. 155, § 5/HB 732; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 265, § 2/SB 121.)

The 2012 amendment, effective July 1, 2012, added subsection (a); redesignated former subsection (a) as present paragraph (b)(1); in paragraph (b)(1) and in subparagraph (b)(2)(A), inserted “and trailer” in the first sentence; in paragraph (b)(1), substituted “, or who have received a military medal award, or persons who served during active military combat” for “World War I, World War II, the Korean War, the Vietnam War, or Operation Desert Storm” near the middle of the first sentence and added the second sentence; in subparagraph (b)(2)(A), in the first sentence, inserted “or have received a military medal award or served during active military combat” near the middle, and added “, military medal award recipient license plate, or commemorative service license plate for service during active military combat” at the end, in the second sentence, deleted “retired veteran’s” following “One such”; in subparagraph (b)(2)(B), in the first sentence, substituted “Each member or former member” for “Each retired member” and inserted “listed in subsection (b) of this Code section”; redesignated former subsection (b) as present subsection (c), and, in subsection (c), substituted the present provisions of the first sentence for the former provisions, which read: “The commissioner shall design a retired veteran’s license plate or a distinctive license plate to commemorate service by the United States armed forces in wars listed in subsection (a) of this Code section.”; substituted

“cars, trucks, and trailers” for “cars and trucks” in the second sentence of subsection (c) and in the first sentence of present subsection (d); redesignated former subsection (c) as present subsection (d); in subsection (d), substituted “, or recipients of a military medal award, or persons who served during active military combat” for “World War I, World War II, the Korean War, the Vietnam War, or Operation Desert Storm”; redesignated former subsection (d) as present subsection (e); in subsection (e), in the second sentence, deleted “retired” following “deceased” near the beginning, and substituted “received a military medal award or who served during active military combat” for “World War I, World War II, the Korean War, the Vietnam War, or Operation Desert Storm” near the middle; and redesignated former subsection (e) as present subsection (f).

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this subsection” for “subsection (b) of this Code section” in the first sentence of subparagraph (b)(2)(B) and substituted “United States, recipients” for “United States, or recipients” near the middle of the second sentence in subsection (d). The second 2013 amendment, effective July 1, 2013, added paragraph (a)(3); in the first sentence of paragraph (b)(1) and in the second sentence of subsection (d), deleted “retired” preceding “veterans”; in paragraph (b)(1), deleted the former second sentence, which

read: "Eligibility to receive a special and distinctive vehicle license plate for persons who are no longer serving in the United States military shall be conditioned on such person having been discharged from military service under honorable conditions."; in subparagraph (b)(2)(A), in the first sentence, substituted "owners who are veterans" for "owners who retired from active duty with the armed forces of the United States" near the beginning; deleted "retired" preceding "veteran's" near the middle of subparagraph (b)(2)(A) and in the first sentence of subsection (c); deleted ", for such plates manufactured after July 1, 2001," following "additionally" near the end of subsection (d); and deleted the former last sentence in subsection (f), which read: "It shall be a requirement that a county name decal shall be affixed and displayed on

license plates issued under this Code section."

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "in subsection (a) of this Code section" was substituted for "above" in the first sentence in subsection (b).

Pursuant to Code Section 28-9-5, in 2012, "subsection (e)" was substituted for "subsection (d)" in the last sentence of subsection (c) and "subparagraph (b)(2)(A)" was substituted for "subparagraph (a)(2)(A)" in the first sentence of subsection (f).

Administrative rules and regulations. — Veteran license plates, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Rule § 560-10-22-08.

40-2-85.2. Veterans of the Chosin Reservoir Campaign of 1950.

(a) On and after January 1, 1999, motor vehicle owners who are United States armed forces veterans of the Chosin Reservoir Campaign of 1950 in North Korea shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, trucks under 14,000 pounds gross vehicle weight, or recreational vehicles used for personal transportation. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(b) A veteran who qualifies for the special and distinctive license plate pursuant to subsection (a) of this Code section shall make application therefor with the commissioner and include the requisite fee. The commissioner shall design a distinctive license plate as provided in subsection (c) of this Code section and issue the distinctive license plates to qualifying applicants. There shall be no minimum required number of applicants for such distinctive license plate. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars and trucks before issuing these license plates in lieu of the regular Georgia license plates. The additional manufacturing fee for such special and distinctive license plates shall be \$25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold.

(c) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars or

trucks used for personal transportation, except that the word "CHOSIN" and no other letters shall be placed horizontally immediately to the left of the numbers on the license plate so as to distinctively identify the owner as a veteran of the Chosin Reservoir Campaign of 1950 in North Korea.

(d) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran of the Chosin Reservoir Campaign of 1950 in North Korea shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such veteran ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying veteran's death or acquired thereafter, so long as such person does not remarry.

(e) Special license plates issued under this Code section shall be renewed annually with a revalidation decal, as provided in Code Section 40-2-31, without payment of an additional \$25.00 annual registration fee. Special license plates issued under this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. (Code 1981, § 40-2-85.2, enacted by Ga. L. 1998, p. 1179, § 27A; Ga. L. 2007, p. 668, § 3/SB 81.)

40-2-85.3. Special license plates honoring family members of service members killed in action.

(a) Special license plates honoring the family members of service members who have been killed in action while serving in the armed forces of the United States shall be issued in this state. The license plate shall be officially designated as the Gold Star license plate.

(b) The commissioner, in cooperation with supporters of this license plate, shall design a special license plate for the family members of service members who have been killed in action while serving in the armed forces of the United States. The license plates must be of the same size as general issue motor vehicle license plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. The license plate shall bear in a conspicuous place a gold star with blue fringe on a white background with a red border. This is the symbol for a fallen service member. In the indented area normally used for the county of residence decal, the words "Gold Star Family" shall be displayed.

(c) Notwithstanding the provisions of subsections (a) and (b) of this Code section, this Code section shall not be implemented until such time as the State of Georgia has, through a licensing agreement or

otherwise, received such license or other permission as may be required to implement this Code section. The design of the initial edition of such special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(d) Any motor vehicle owner who is a resident of Georgia, other than one registering under the International Registration Plan, upon complying with state laws relating to registration and licensing of motor vehicles shall be issued such a special license plate upon application therefor. Special license plates issued under this Code section shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31. Upon payment of all ad valorem taxes and other fees due at registration of a motor vehicle an eligible family member may apply for a Gold Star license plate. In order to qualify as an eligible family member, the person must be directly related to the fallen service member as a spouse, mother, father, sibling, child, or step-parent. One free license plate shall be allowed for the spouse, mother, and father, and they may purchase additional license plates for each motor vehicle they register in this state. Siblings, children, or step-parents may purchase Gold Star license plates for motor vehicles registered in this state. The cost of a Gold Star license plate shall be established by the department, but shall not exceed the cost of other specialty license plates. If a Gold Star license plate is lost, damaged, or stolen, the eligible family member must pay the reasonable cost, to be established by the department, but not to exceed the cost of other specialty license plates, to replace the Gold Star license plate.

(e) Whether a service member is deemed to have been killed in action shall be determined by the classification of death as listed by the United States Department of Defense and may be verified from documentation directly from the Department of Defense.

(f) A free Gold Star license plate shall be issued only to the spouse, mother, and father of service members who resided in Georgia at the time of the death of the service member. However, an eligible family member, except for nonresident siblings, who was not a resident of Georgia at the time of the death of the service member may purchase a Gold Star license plate, at a cost to be established by the department, not to exceed the cost of other specialty license plates.

(g) Renewal decals shall be issued at no cost to any person that received a free license plate under the provisions of this Code section upon the payment of ad valorem taxes and other registration fees, provided that the renewal is applied for on or within 30 days prior to the renewal date of the eligible person. If the eligible person fails to renew within such time, he or she shall pay a standard renewal fee and be subject to the standard penalties for late payment of ad valorem taxes due on the motor vehicle.

(h) An eligible family member may request a Gold Star license plate at any time during his or her registration period. If such a license plate is to replace a current valid license plate, the license plate shall be issued with appropriate renewal decals attached.

(i) License plates issued pursuant to this Code section shall not be transferred between vehicles as provided in Code Section 40-2-42, unless the transfer is to another motor vehicle owned by the eligible family member.

(j) Gold Star license plates shall be issued within 30 days of application.

(k) The commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section. (Code 1981, § 40-2-86.18, enacted by Ga. L. 2006, p. 741, § 1/SB 523; Code 1981, § 40-2-85.3, as redesignated by Ga. L. 2010, p. 9, § 1-76; Ga. L. 2010, p. 141, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 40-2-86.18, as enacted by Ga. L. 2006, p. 801, § 1/SB 539, was redesignated as Code Section 40-2-86.19; Code Section 40-2-86.18 as enacted by Ga. L. 2006, p. 803, § 1/SB 538, was redesignated as Code Section 40-2-86.20; and Code Section 40-2-86.18 as enacted by Ga.

L. 2006, p. 1094, § 12/HB 1053, was redesignated as Code Section 40-2-86.21.

The amendment of subsection (a) of this Code section by Ga. L. 2010, p. 9, § 1-76/HB 1055, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 141, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

40-2-86. Special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or nonprofit corporations.

(a)(1) As used in this Code section, except as otherwise provided in subsection (n) of this Code section, the term:

(A) “Manufacturing fee” means a \$25.00 fee paid at the time a special license plate is issued.

(B) “Special license plate fee” means a \$35.00 fee paid at the time a special license plate is issued.

(C) "Special license plate renewal fee" means a \$35.00 fee paid at the time a revalidation decal is issued for a special license plate.

(2) In accordance with Article III, Section IX, Paragraph VI(n) of the Constitution, the General Assembly has determined that the issuance of special license plates to support an agency or fund or a program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue Code and dedicating a portion of the funds raised from the sale of these special license plates is in the best interests of the people of this state.

(b) The agency, fund, or nonprofit corporation sponsoring the special license plate, in cooperation with the commissioner, shall design special distinctive license plates appropriate to promote the program benefited by the sale of the special license plate. The special license plates must be of the same size as general issue motor vehicle license plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. No two recipients shall receive identically numbered plates. The agency, fund, or nonprofit corporation sponsoring the license plate may request the assignment of the first of 100 in a series of license plates upon payment of an additional initial registration fee of \$25.00 for each license plate requested.

(c) Notwithstanding the provisions of subsection (b) of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise, received such licenses or other permissions as may be required to produce the special license plate. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(d) Any Georgia resident who is the owner of a motor vehicle, except a vehicle registered under the International Registration Plan, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and upon the payment of the appropriate fees in addition to the regular motor vehicle registration fee shall be able to apply for a special license plate listed in this Code section. Revalidation decals shall be issued for special license plates in the same manner as provided for general issue license plates.

(e) Before the department disburses to the agency, fund, or nonprofit corporation funds from the sale of special license plates, the agency, fund, or nonprofit corporation must provide a written statement stating the manner in which such funds shall be utilized. In addition, a nonprofit corporation shall provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The purposes for which the funds shall be utilized shall be the same as those specified in this Code section authorizing the dedication to the agency, fund, or nonprofit corporation of revenue from the sale of special license plates. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. Any agency, fund, or nonprofit corporation which receives funds under subsection (n) of this Code section shall submit annually to the members of the Senate Natural Resources and the Environment Committee, the House Committee on Game, Fish, and Parks, the House Committee on Appropriations, and the Senate Appropriations Committee, and to the commissioner of natural resources a detailed audit containing the disposition and expenditure of all funds received pursuant to such subsection. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(f) An applicant may request a special license plate any time during the applicant's registration period. If such a license plate is to replace a current valid license plate, the special license plate shall be issued with appropriate decals attached upon payment of the manufacturing fee and the special license plate renewal fee.

(g) On or after July 1, 2010, no special license plate authorized pursuant to subsection (l) of this Code section shall be issued except upon the receipt by the department of at least 1,000 prepaid applications along with the manufacturing fees. The special license plate shall have an application period of two years after the date on which the application period becomes effective for payment of the manufacturing fee. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fees, and all fees shall be refunded to applicants; provided, however, that once the department has received 1,000 prepaid applications along with the manufacturing fees, the sponsor shall not be entitled to a refund.

(h) The department shall not be required to continue to manufacture the special license plate if the number of active registrations falls below 500 registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31. A current registrant may continue to

renew such special license plate during his or her annual registration period upon payment of the special license plate renewal fee which shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The department may continue to issue such special license plates that it has in its inventory to assist in achieving the minimum number of registrations. If the special license plate falls below 500 active registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31, the sponsoring agency, fund, or nonprofit corporation shall be required again to obtain 1,000 prepaid applications accompanied by the manufacturing fees to continue to manufacture the special license plate.

(i) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(j) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(k) The commissioner is authorized and directed to establish procedures and promulgate rules and regulations to effectuate the purposes of this Code section.

(l)(1) The General Assembly has determined that special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a manufacturing fee, a special license plate fee, and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Manufacturing fee — \$25.00 of which \$24.00 is to be deposited into the general fund and \$1.00 to be paid to the local county tag agent;

(B) Special license plate fee — \$35.00 of which \$25.00 is to be deposited into the general fund and \$10.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation as permitted by Article III, Section IX, Paragraph VI(n) of the Constitution; and

(C) Special license plate renewal fee — \$35.00 of which \$25.00 is to be deposited into the general fund and \$10.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation as permitted by Article III, Section IX, Paragraph VI(n) of the Constitution.

(2) Reserved.

(3) Reserved.

(4) Reserved.

(5) Special license plates promoting the conservation of wildflowers within this state. The funds raised by the sale of these special license plates shall be disbursed to the Department of Transportation to be deposited in the Roadside Enhancement and Beautification Fund established by Code Section 32-6-75.2 and shall be expended only for the purposes enumerated in Code Section 32-6-75.2 and Article III, Section IX, Paragraph VI(1) of the Constitution of the State of Georgia.

(6) Special license plates promoting the dog and cat reproductive sterilization support program of the Georgia Department of Agriculture. The funds raised by the sale of these special license plates shall be disbursed to the Georgia Department of Agriculture and shall be deposited in the special fund for support of the dog and cat reproductive sterilization support program created by Code Section 4-15-1 and Article III, Section IX, Paragraph VI(m) of the Constitution of the State of Georgia.

(7) Special license plates to honor Georgia educators. The funds raised by the sale of these special license plates shall be disbursed to a charitable foundation designated by the State School Superintendent and used to fund educational programs, grants to teachers, and scholarships. The license plates shall display the phrase "Georgia Educators Make A Difference" and a ripe Red Delicious apple shall be depicted to the left of the identifying number of each plate.

(8)(A) The commissioner in cooperation with a college or university may design a special license plate to be issued commemorating that college or university, which license plate shall be similar in design to the license plate issued to all other residents of the state except that the logo or emblem of the college or university shall be placed on the license plate along with the letters and numbers on the license plate. The name of the college or university shall be imprinted on such special license plate in lieu of the county name decal.

(B) Any college or university that enters into an agreement with the commissioner pursuant to this paragraph shall waive any royalty fees to which it might otherwise be entitled for use of its seal, symbol, emblem, or logotype as provided in this paragraph.

(C) Each college or university located in Georgia that enters into an agreement with the commissioner pursuant to this paragraph shall designate a charitable foundation which shall annually receive an allocation from the special license plate and special license plate renewal fees collected as provided in paragraph (1) of this subsection. Special license plates issued under this paragraph shall be transferred between vehicles as provided in Code Section 40-2-42.

(D) The funds allocated for colleges and universities located in Georgia shall be delivered by the department to the charitable foundation designated by the particular college or university to support needs based, academic, financial aid scholarships for eligible undergraduate students enrolled in the college or university. The funds otherwise allocated for colleges and universities located outside the State of Georgia shall be placed into the general fund.

(E) Each college or university shall review and approve plans for the implementation of these scholarship programs by the applicable charitable foundation. These plans shall include, but need not be limited to, criteria for the awarding of the scholarships and procedures for determining the recipients.

(9) A special license plate for the Georgia Center for the Book to support the purchase of books for public libraries in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Center for the Book.

(10) A special license plate for Children's Healthcare of Atlanta to support the work this pediatric hospital system does in the State of Georgia. The funds raised by the sale of this special license plate shall be disbursed to Children's Healthcare of Atlanta.

(11) A special license plate for the Georgia War Veterans Nursing Home to support the implementation and operation of the Georgia War Veterans Nursing Home. The funds raised by the sale of this special license plate shall be disbursed to the Department of Veterans Service for use in operating the Georgia War Veterans Nursing Home.

(12) A special license plate for the Georgia Automobile Racing Hall of Fame Association to promote the Georgia Automobile Racing Hall of Fame Association, which is devoted to preserving the history of automobile racing in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Automobile Racing Hall of Fame Association.

(13) A special license plate for the Alzheimer's Association, Georgia Chapter, to help eliminate Alzheimer's disease through the advancement of research and to enhance care and support for individuals, their families, and caregivers. The funds raised by the sale of this special license plate shall be disbursed to the Alzheimer's Association, Georgia Chapter.

(14) A special license plate for the school health and physical education program to help fund school health and physical education programs. The funds raised by the sale of this special license plate shall be disbursed to the Department of Education.

(15) A special license plate for stroke awareness, treatment, and prevention to support programs aiding stroke victims in Georgia. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Stroke Awareness" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Center for Telehealth of the Georgia Health Sciences University.

(16) A special license plate for Project Lifesaver promoting the establishment of a Project Lifesaver or similar type of program by local law enforcement agencies. Project Lifesaver's mission is to use state of the art technology in assisting those who care for victims of Alzheimer's disease and other related mental dysfunction disorders and victims who become lost. The funds raised by the sale of this special license plate shall be disbursed to the Department of Public Safety or a nonprofit corporation organized exclusively for the purpose of establishing a Project Lifesaver or similar type of program by local law enforcement agencies.

(17) A special license plate for pediatric cancer to raise funds to support the treatment of pediatric cancer. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Cure Kids' Cancer" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Department of Community Health to be deposited in the Indigent Care Trust Fund created by Code Section 31-8-152 to fund pediatric cancer screening and treatment related programs for those children who are medically indigent and may have cancer.

(18) A special license plate for the child care industry to promote the child care industry by encouraging higher educational standards and providing for professional camaraderie for child care providers. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Support Improved Child Care" in lieu of the name of the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Minority Alliance for Child Care Development Advocates, Inc., for the development of programs to help improve child care.

(19) A special license plate to display the motto, "In God We Trust." The funds raised by the sale of this special license plate shall be disbursed to the Boy Scouts of America for the development of scouting programs.

(20) A special license plate for child abuse prevention. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Prevent Child Abuse" in lieu of the name of

the county of issuance. The funds raised by the sale of this special license plate shall be disbursed to the Foster Family Foundation of Georgia for the development of programs to help victims of child abuse.

(21) A special license plate for the Thanks Mom and Dad Fund. The funds raised by the sale of this special license plate shall be disbursed to the Department of Human Services to address the key needs of the state's older population or a nonprofit corporation organized to serve the needs of the state's older population.

(22) A special license plate for pediatric cancer research. The funds raised by the sale of this special license plate shall be disbursed to the Joanna McAfee Childhood Cancer Foundation for support of pediatric cancer research. The design of the special license plate provided for in this paragraph shall include the words "Joanna McAfee Childhood Cancer Foundation" horizontally across the bottom of the plate in lieu of the county name.

(23) A special license plate for supporting beautification projects in Cobb County. The funds raised by the sale of this special license plate shall be disbursed to Keep Cobb Beautiful, Inc., for support of beautification projects in Cobb County.

(24) A special license plate for AID Atlanta. The funds raised by the sale of this special license plate shall be disbursed to AID Atlanta which is committed to providing people living with HIV the information and support they need to live healthy and productive lives.

(25) A special license endorsing "Support Our Troops." The funds raised by the sale of this special license plate shall be disbursed to the Georgia National Guard Family Support Foundation, Incorporated.

(26) A special license plate for the Sons of Confederate Veterans. The funds raised by the sale of this special license plate shall be disbursed to Georgia Sons of Confederate Veterans.

(27) A special license plate for amyotrophic lateral sclerosis (ALS), also known as "Lou Gehrig's disease," to support research and education on amyotrophic lateral sclerosis. The funds raised by the sale of this special license plate shall be disbursed to the ALS Association of Georgia.

(28) A special license plate for foster parents to support programs for foster parents in Georgia. The funds raised by the sale of this special license plate shall be disbursed to The Adoptive and Foster Parent Association of Georgia, Inc., for support of foster parents in Georgia.

(29) A special license plate for the Atlanta Braves Foundation to assist the charities supported by the foundation. The funds raised by

the sale of this special license plate shall be disbursed to the Department of Community Affairs or such other public agency or nonprofit corporation as may be designated.

(30) A special license plate for the Atlanta Falcons Youth Foundation to assist the charities supported by the foundation. The funds raised by the sale of this special license plate shall be disbursed to the Atlanta Falcons Youth Foundation. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Atlanta Falcons" in lieu of the name of the county of issuance.

(31) A special license plate for supporting beautification projects in Georgia. The funds raised by the sale of this special license plate shall be disbursed to Keep Georgia Beautiful Foundation, Inc., for support of beautification projects in Georgia.

(32) A special license plate displaying the logo of Choose Life, Inc. The words "Choose Life" must appear at the bottom. The funds raised by the sale of this special license plate shall be disbursed to Choose Life of Georgia, Inc., to be distributed among nonprofit corporations in Georgia that counsel women to consider adoption.

(33) A special license plate supporting education on the maritime history of Georgia's coast. The funds raised by the sale of this special license plate shall be disbursed to The Georgia Maritime Foundation, Inc., for use in programs supporting education on the maritime history of Georgia.

(34) A special license plate supporting programs for persons with brain related disorders and disabilities. The funds raised by the sale of this special license plate shall be disbursed to Pilot International for support of programs for persons with brain related disorders in Georgia.

(35) A special license plate supporting agriculture in Georgia. The funds raised by the sale of this special license plate shall be evenly split between Georgia 4-H and the Georgia Association of Future Farmers of America to fund projects promoting agriculture in Georgia.

(36) A special license plate promoting the Georgia equine industry. The funds raised by the sale of this special license plate shall be disbursed to the Agricultural Commodity Commission for Equines.

(37) A special license plate promoting African American history and tourism in Georgia. The funds raised by the sale of this special license plate shall be disbursed to organizations dedicated to the preservation of African American history in Georgia.

(38) A special license plate honoring veterans who have been awarded the Bronze Star. The funds raised by the sale of this special

license plate shall be disbursed to the National Guard Family Foundation.

(39) A special license plate promoting the arts in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Council for the Arts.

(40) A special license plate supporting programs for the treatment of autism. The funds raised by the sale of this special license plate shall be disbursed to the Department of Behavioral Health and Developmental Disabilities for the support of programs for the treatment of autism in Georgia.

(41) A special license plate honoring the work of The Garden Club of Georgia, Inc. The funds raised by the sale of this special license plate shall be disbursed to The Garden Club of Georgia, Inc., and used to fund scholarships that are awarded by the club.

(42) A special license plate promoting the Georgia Junior Golf Foundation. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Junior Golf Foundation.

(43) A special license plate commemorating 100 years of scouting in the United States. The funds raised by the sale of this special license plate shall be disbursed to the Boy Scouts of America for the development of scouting programs.

(44) A special license plate supporting Cobb County Public Schools. The funds raised by the sale of this special license plate shall be disbursed to the Cobb County Public Schools Educational Foundation and used to fund educational programs, grants to teachers, and scholarships in the Cobb County Public School System.

(45) A special license plate supporting the Georgia Sea Turtle Center. The funds raised by the sale of this special license plate shall be charged and disbursed to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund and used to fund nongame wildlife conservation and education programs. The design of the license plate provided for in this paragraph shall include the words "Jekyll Island — Georgia's Jewel" horizontally across the bottom of the plate in lieu of the county name, with a diamond jewel symbol in place of the dash.

(46) A special license plate commemorating and supporting the sport of soccer in Georgia. The funds raised by the sale of this special license plate shall be disbursed to the Georgia State Soccer Association, Inc., for the development and promotion of soccer programs in the State of Georgia. Such license plate shall not include a space for a county decal but shall instead bear the legend "gasoccer.org".

(47) A special license plate for the Georgia Aquarium to support its mission as an entertaining, educational, and scientific institution and

to promote the conservation of aquatic biodiversity throughout the world. The funds raised by the sale of this special plate shall be disbursed to Georgia Aquarium, Inc. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Georgia Aquarium" in lieu of the name of the county of issuance.

(48) A special license plate for Zoo Atlanta to support its mission to inspire the citizens of Atlanta and Georgia and all visitors to the zoo to value wildlife on Earth; to help safeguard existing species through conservation by providing for an informative, educational, and engaging experience to all visitors; to carry out the responsible stewardship of the animals and the zoo facility; and to engage in related conservation activities and research. The funds raised by the sale of this special plate shall be disbursed to the Atlanta-Fulton County Zoo, Inc. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Protect Wildlife" in lieu of the name of the county of issuance.

(49) A special license plate supporting the Appalachian Trail. The funds raised by the sale of this special license plate shall be disbursed to the Appalachian Trail Conservancy and used to protect, maintain, and conserve the Georgia portion of the Appalachian Trail and connecting trails, and to promote awareness of wilderness, hiking, and back country recreation. Such license plate shall not include a space for a county name decal but shall instead bear the legend "www.appalachiantrail.org".

(50) A special license plate supporting the Atlanta Braves Foundation. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Atlanta Braves Foundation and used in the foundation's philanthropic activities and charitable sponsorships. Such license plate shall not include a space for a county name decal but shall instead bear the legend "Go Braves."

(51) A special license plate for the Grady Health Foundation to support and improve the quality of health care services. The funds raised by the sale of this special license plate shall be disbursed to the Grady Health Foundation.

(m)(1) The General Assembly has determined that the following special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a manufacturing fee, a special license plate fee, and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Manufacturing fee — \$25.00 of which \$24.00 is to be deposited into the general fund and \$1.00 to be paid to the local county tag agent;

(B) Special license plate fee — \$35.00 of which \$13.00 is to be deposited into the general fund and \$22.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation; and

(C) Special license plate renewal fee — \$35.00 of which \$13.00 is to be deposited into the general fund and \$22.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation.

(2) A special license plate promoting the United States Disabled Athletes Fund, for the support of disabled athletes. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the United States Disabled Athletes Fund.

(3) A special license plate commemorating Civil War battlefields and historic sites. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Civil War Commission for the acquisition of Civil War battlefields and associated Civil War historic sites in this state and for the maintenance, protection, and interpretation of the same as provided by Article 5 of Chapter 7 of Title 50.

(4) A special license plate promoting historic preservation efforts. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Natural Resources for use by the Historic Preservation Division to fund historic preservation programs in the state through the Georgia historic preservation grant program as otherwise authorized by law.

(5) A special license plate promoting bicycle safety. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Governor's Highway Safety Program administered by the Office of Highway Safety in the Department of Public Safety.

(6) A special license plate honoring families with a member serving in the military. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Veterans Service for use by the National Guard Foundation in carrying out such programs and purposes as may be contractually agreed upon by the department and the foundation.

(7) A special license plate promoting "Support Georgia Troops." The funds raised by the sale of this special license plate shall be

disbursed as provided in paragraph (1) of this subsection to the Department of Veterans Service for use by the National Guard Foundation in carrying out such programs and purposes as may be contractually agreed upon by the department and the foundation.

(8) A special license plate promoting NASCAR. The provisions of paragraph (1) of this subsection notwithstanding, from the additional \$35.00 special license plate renewal fee charged for the issuance and renewal of the NASCAR license plates authorized under this paragraph, \$10.25 shall be used by the department for purchasing plates from the supplier of the plates, as designated by NASCAR, and royalty costs, \$10.00 shall be deposited in the general fund, and \$14.75 shall be disbursed to the Governor's Highway Safety Program administered by the Office of Highway Safety in the Department of Public Safety.

(9) A special license plate to support breast cancer related programs for the medically indigent. The provisions of paragraph (1) of this subsection notwithstanding, from the additional \$35.00 special license plate fee or special license plate renewal fee charged for the issuance and renewal of breast cancer license plates authorized under this paragraph, \$12.95 shall be deposited in the general fund and \$22.05 shall be deposited in the Indigent Care Trust Fund created by Code Section 31-8-152 to fund cancer screening and treatment related to programs for those persons who are medically indigent and may have breast cancer. To the extent consistent with Article III, Section IX, Paragraph VI(i) of the Constitution and Article 6 of Chapter 8 of Title 31, such programs may include education, breast cancer screening, grants-in-aid to breast cancer victims, pharmacy assistance programs for breast cancer victims, and other projects to encourage public support for the special license plate and the activities which it funds. Such design shall include a logo the same as the United States postal stamp supporting breast cancer research and bearing the slogan "Fund the Fight. Find A Cure." over the sketch of a woman and the breast cancer awareness pink ribbon symbol.

(10) A special license plate to support prostate cancer related awareness and research programs. The provisions of paragraph (1) of this subsection notwithstanding, from the additional \$35.00 special license plate fee or special license plate renewal fee charged for the issuance and renewal of prostate cancer license plates authorized under this paragraph, \$13.00 shall be deposited in the general fund and \$22.00 shall be disbursed to the Georgia Prostate Cancer Coalition to fund prostate cancer awareness, research, screening, and treatment related programs.

(11) A special license plate to support lung cancer related awareness and research programs. The funds raised by the sale of this

special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Joan Gaeta Lung Cancer Fund to fund lung cancer awareness, screening, research, and treatment related programs.

(12) A special license plate to support Georgia nurses and charitable and philanthropic efforts to support, advance, and promote the nursing profession. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Georgia Nurses Foundation of the Georgia Nurses Association for carrying out such programs and purposes.

(n)(1) The General Assembly recognizes that Code Section 12-3-600 mandates that the best interests of the state are served by providing for the conservation of nongame species of wildlife and has determined that the following special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a special license plate fee and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Special license plate fee — \$25.00 of which \$5.00 is to be deposited into the general fund, \$1.00 is to be paid to the local county tag agent and \$19.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation; and

(B) Special license plate renewal fee — \$25.00 of which \$5.00 is to be deposited into the general fund and \$20.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation.

(2) Special license plates promoting the Nongame-Endangered Wildlife Program of the Department of Natural Resources. The funds raised by the sale of these special license plates shall be disbursed to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund of the Department of Natural Resources for the purposes enumerated in subsection (b) of Code Section 12-3-602. Such license plates shall not include a space for a county name decal but shall instead bear the legend "Give Wildlife a Chance" in lieu of the name of the county of issuance.

(3) A special license plate promoting conservation and enhancement of trout populations. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to supplement trout restoration and management programs.

(4) A special license plate supporting the Bobwhite Quail Restoration Initiative. The funds raised by the sale of this special license

plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to conduct programs designed to enhance the bobwhite quail population in this state. Such programs may include the creation of habitat demonstration areas on state managed wildlife lands, education programs, technical assistance to private landowners in the creation and maintenance of bobwhite quail habitats on their lands, and projects to encourage public support for the license plate and the activities it funds. The Department of Natural Resources may enter into such contractual agreements as may be appropriate to further the objectives of the Bobwhite Quail Restoration Initiative, including entering into contractual agreements whereby private landowners, public agencies, or corporate entities create, preserve, or enhance habitat for bobwhite quail in return for the payment of incentives. Such license plate shall not include a space for a county decal but shall instead bear the legend "Support Wildlife" in lieu of the name of the county of issuance. (Code 1981, § 40-2-86.21, enacted by Ga. L. 2006, p. 1094, § 12/HB 1053; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2007, p. 668, §§ 4-6/SB 81; Ga. L. 2008, p. 832, §§ 2, 3/HB 1220; Ga. L. 2008, p. 1191, § 1/HB 963; Ga. L. 2009, p. 453, § 2-18/HB 228; Ga. L. 2009, p. 833, § 1/HB 639; Code 1981, § 40-2-86, as redesignated by Ga. L. 2010, p. 9, § 1-77/HB 1055; Ga. L. 2010, p. 143, § 4.1/HB 1005; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 155, § 6/HB 732; Ga. L. 2013, p. 265, § 3/SB 121; Ga. L. 2014, p. 74, §§ 1-3/HB 881.)

The 2012 amendment, effective July 1, 2012, deleted the former second sentence of paragraph (a)(2), which read: "Any new special license plates adopted on or after July 1, 2010, that share a portion of the revenue raised with any agency, fund, nonprofit organization, or other similar entity shall allocate the revenue in accordance with the formula contained in subsection (l) of this Code section."; and added paragraphs (m)(10) through (m)(12).

The 2013 amendment, effective July 1, 2013, substituted "AID Atlanta" for "the AIDS Survival Project" twice in paragraph (l)(24); and added paragraphs (l)(49) and (l)(50).

The 2014 amendment, effective July 1, 2014, inserted "except as otherwise provided in subsection (n) of this Code section," in paragraph (a)(1); in subsection (e), in the second and third sentences, substituted "shall" for "must", and added the fifth sentence; in paragraph (l)(2), substituted "Reserved" for "Special license plates promoting the Nongame-

Endangered Wildlife Program of the Georgia Department of Natural Resources. The funds raised by the sale of these special license plates shall be disbursed to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund of the Georgia Department of Natural Resources for the purposes enumerated in subsection (b) of Code Section 12-3-602. Such license plates shall not include a space for a county name decal but shall instead bear the legend 'Give Wildlife a Chance' in lieu of the name of the county of issuance"; in paragraph (l)(3), substituted "Reserved" for "A special license plate promoting conservation and enhancement of trout populations. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to supplement trout restoration and management programs"; in paragraph (l)(4), substituted "Reserved" for "A special license plate supporting the Bobwhite Quail Restoration Initiative. The funds raised by the sale of this special

license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to conduct programs designed to enhance the bobwhite quail population in this state. Such programs may include the creation of habitat demonstration areas on state managed wildlife lands, education programs, technical assistance to private landowners in the creation and maintenance of bobwhite quail habitats on their lands, and projects to encourage public support for the license plate and the activities it funds. The Department of Natural Resources may enter into such contractual agreements as may be appropriate to further the objectives of the Bobwhite Quail Restoration Initiative, including entering into contractual agreements whereby private landowners, public agencies, or corporate entities create, preserve, or enhance habitat for bobwhite quail in return for the payment of incentives. Such license plate shall not include a space for a county decal but shall instead bear the legend 'Support Wildlife' in lieu of the name of the county of issuance"; added paragraph (l)(51); and added subsection (n).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 40-2-86.18, as enacted by Ga. L. 2006, p. 1094, § 12/HB 1053, was redesignated as Code Section 40-2-86.

The enactment of this Code section by Ga. L. 2006, p. 1092, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 1094, § 12/HB 1053. See *County of Butts v. Strahan*, 151 Ga. 417 (1920).

The amendment of this Code section by Ga. L. 2007, p. 47, § 40/SB 103, irreconcilably conflicted with and was treated as superseded by Ga. L. 2007, p. 668, §§ 4-6. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2010, paragraph (o)(41), as enacted by Ga. L. 2010, p. 143, § 4.1/HB 1005, was redesignated as paragraph (l)(48).

Editor's notes. — Ga. L. 2006, p. 1094, § 13/HB 1053, not codified by the General Assembly, provides the enactment of this Code section became effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

This Code section formerly pertained to special license plates for emergency medical technicians. The former Code section was based on Code 1981, § 40-2-86, enacted by Ga. L. 1992, p. 2785, § 1.2; Ga. L. 1997, p. 419, § 32. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of this Code section.

40-2-86.1. Special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or nonprofit corporations — Plates to identify persons with diabetes, honor veterans of the armed services, and honor the Georgia Association of Realtors.

(a) The General Assembly has determined that the issuance of special license plates to support an agency or fund or a program beneficial to the people of this state that is administered by a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the Internal Revenue Code and, subject to the appropriation process of the General Assembly, appropriating a portion of the funds raised from the sale of these special license plates is in the best interests of the people of this state. Therefore, the license plates listed in subsection (l) of this Code section shall be issued by the department if all of the requirements of subsections (b) through (k) of this Code section have been satisfied.

(b) The commissioner, in cooperation with the agency, fund, or nonprofit corporation sponsoring the special license plate, shall design special distinctive license plates intended to promote the program benefited by the sale of the special license plate. The special license plates must be of the same size as general issue motor vehicle license plates and shall include a unique design and identifying number, whereby the total number of characters does not exceed an amount to be determined by the commissioner. No two recipients shall receive identically numbered plates. The agency, fund, or nonprofit corporation sponsoring the license plate may request the assignment of the first of 100 in a series of license plates upon payment of an additional initial registration fee of \$25.00 for each license plate requested.

(c) Notwithstanding the provisions of subsection (b) of this Code section, no special license plate shall be produced until such time as the State of Georgia has, through a licensing agreement or otherwise, received such licenses or other permissions as may be required to produce the special license plate. The design of the initial edition of any special license plate, as well as the design of subsequent editions and excepting only any part or parts of the designs owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The commissioner may take such steps as may be necessary to give notice of and protect such right, including the copyright or copyrights. However, such steps shall be cumulative of the ownership and exclusive use and control established by this subsection as a matter of law, and no person shall reproduce or otherwise use such design or designs, except as authorized by the commissioner.

(d) Any Georgia resident who is the owner of a motor vehicle, except a vehicle registered under the International Registration Plan, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles and upon the payment of a manufacturing fee of \$25.00 and a special license plate fee of \$35.00, in addition to the regular motor vehicle registration fee, shall be able to apply for a special license plate listed in subsection (l) of this Code section. Revalidation decals shall be issued for special license plates in the same manner as provided for general issue license plates, with the addition of a \$35.00 special license plate renewal fee, provided that special license plates issued pursuant to paragraph (9) of subsection (l) of this Code section shall be exempt from such special license plate renewal fee.

(e) The manufacturing fee, special license plate fee, and special license plate renewal fee derived from the sale of special license plates contained in subsection (l) of this Code section shall be deposited into the general fund. The sponsoring agency, fund, or nonprofit corporation, subject to the appropriation process of the General Assembly, may

request that the funds derived from the sale of special license plates be appropriated to the department for disbursement to such agency, fund, or nonprofit corporation.

(f) Before the department disburses to the agency, fund, or nonprofit corporation funds from the sale of special license plates, the agency, fund, or nonprofit corporation must provide a written statement stating the manner in which such funds shall be utilized. In addition, a nonprofit corporation must provide the department with documentation of its nonprofit status under Section 501(c)(3) of Title 26 of the Internal Revenue Code. The purposes for which the funds shall be utilized must be the same as those specified in subsection (l) of this Code section authorizing the potential appropriation to the agency, fund, or nonprofit corporation of revenue from the sale of special license plates. The agency, fund, or nonprofit corporation shall periodically provide to the commissioner an audit of the use of the funds or other evidence of use of the funds satisfactory to the commissioner. If it is determined that the funds are not being used for the purposes set forth in the statement provided by the agency, fund, or nonprofit corporation, the department shall withhold payment of such funds until such noncompliance issues are resolved.

(g) An applicant may request a special license plate any time during the applicant's registration period. If such a license plate is to replace a current valid license plate, the special license plate shall be issued with appropriate decals attached, upon the payment of any applicable registration fees, the manufacturing fee, and the special license plate fee.

(h) No special license plate authorized pursuant to subsection (l) of this Code section shall be issued except upon the receipt by the department of at least 1,000 prepaid applications along with the manufacturing fee. The special license plate shall have an application period of two years from the date of authorization for payment of the manufacturing fee. After such time if the minimum number of applications is not met, the department shall not continue to accept the manufacturing fee, and all fees shall be refunded to applicants; provided, however, that once the department has received 1,000 prepaid applications along with the manufacturing fee, the sponsor shall not be entitled to a refund.

(i) The department shall not be required to continue to manufacture the special license plate if the number of active registrations falls below 500 registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31. A current registrant may continue to renew such special license plate during his or her annual registration period upon payment of an additional \$35.00 special license plate renewal fee, which fee shall be collected by the county tag agent at the

time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34. The department may continue to issue such special license plates that it has in its inventory to assist in achieving the minimum number of registrations. If the special license plate falls below 500 active registrations at any time during the period provided for in subsection (b) of Code Section 40-2-31, the sponsoring agency, fund, or nonprofit corporation shall be required again to obtain 1,000 prepaid applications accompanied by the manufacturing fee to continue to manufacture the special license plate.

(j) Special license plates shall be transferred from one vehicle to another vehicle in accordance with the provisions of Code Section 40-2-80.

(k) Special license plates shall be issued within 30 days of application once the requirements of this Code section have been met.

(l)(1) The General Assembly has determined that license plates promoting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated and the revenue shall be deposited in the general fund, subject to the appropriation process of the General Assembly.

(2) A special license plate identifying persons with diabetes. The main purpose of the special license plate is that law enforcement officers and emergency personnel will be alerted to the potential for special needs before they approach the driver of a vehicle, especially if the vehicle has been involved in an accident. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(3) A special license plate honoring all veterans who have served in the armed services of the United States. All of these men and women have sacrificed a portion of their lives in order to serve their country and protect our freedom. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(4) A special license plate honoring the Georgia Association of Realtors. The Association is being honored for its long-standing support of housing opportunities for all citizens of this state, private property rights, and all organizations that assist people in achieving the American dream of home ownership. The funds raised by the sale of this special license plate shall be deposited in the general fund.

(5) A special license plate honoring Georgia municipal clerks. The municipal clerk's office provides the professional link connecting citizens with their local governing bodies and agencies of government at other levels. The funds raised by the sale of this license plate shall be deposited in the general fund.

(6) A special license plate identifying residents of the State of Georgia who hold an unrevoked and unexpired official amateur radio station license issued by the Federal Communications Commission. The special license plate shall be inscribed with the official amateur radio call letters of such applicant as assigned by the Federal Communications Commission. The funds raised by the sale of this license plate shall be deposited in the general fund.

(7)(A) A special license plate to be issued for alternative fueled vehicles, which license plate shall be similar in design to the license plate issued to all other residents of the state except that the commissioner shall place a distinctive logo or emblem on the license plate which shall distinguish the vehicle as an alternative fueled vehicle eligible to travel in travel lanes designated for such vehicles under paragraph (4) of subsection (a) of Code Section 32-9-4. The words "alternative fueled vehicle" shall be imprinted on such special license plate in lieu of the county name decal. The funds raised by the sale of this license plate shall be deposited in the general fund.

(B) As used in this paragraph, the term:

(i) "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more or such other percentage, but not less than 70 percent, as determined by the United States secretary of energy, by rule as it existed on January 1, 1997, to provide for requirements relating to cold start, safety, or vehicle functions, by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels other than alcohol derived from biological materials; electricity including electricity from solar energy; and any other fuel the United States secretary of energy determined by rule as it existed on January 1, 1997, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(ii) "Alternative fueled vehicle" means:

(I) Any vehicle fueled by alternative fuel as defined in division (i) of this subparagraph; or

(II) A hybrid vehicle, which means a motor vehicle which draws propulsion energy from onboard sources of stored energy which include an internal combustion or heat engine using combustible fuel and a rechargeable energy storage system; and, in the case of a passenger automobile or light truck, means for any 2000 and later model, a vehicle which has received a certificate of conformity under the Clean Air Act, 42

U.S.C. Section 7401, et seq., and meets or exceeds the equivalent qualifying California low-emission vehicle standard under Section 243(e)(2) of the Clean Air Act, 42 U.S.C. Section 7583(c)(2), for that make and model year or, for any 2004 and later model, a vehicle which has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the administrator of the Environmental Protection Agency under Section 202(i) of the Clean Air Act, 42 U.S.C. Section 7521(i), for that make and model year vehicle and which achieves a composite label fuel economy greater than or equal to 1.5 times the Model Year 2002 EPA composite class average for the same vehicle class and which is made by a manufacturer.

(8) A special license plate for antique or hobby or special interest vehicles. As used in this paragraph, the term "antique or hobby or special interest vehicle" means any motor vehicle or motor cycle or a motor vehicle which has been designed and manufactured to resemble an antique or historical vehicle and which is owned as a collector's item and for participation in club activities, exhibitions, tours, parades and similar uses but which may be used for general transportation. No owner of such antique vehicle or hobby or special interest vehicle shall be required to obtain any special permits for its operation on the roads of this state. The funds raised by the sale of this license plate shall be deposited in the general fund.

(9)(A) A special license plate for owners of a private passenger car or truck used for personal transportation, who are firefighters certified pursuant to Article 1 of Chapter 4 of Title 25 and who are members of fire departments certified pursuant to Article 2 of Chapter 3 of Title 25 and motor vehicle owners who are certified firefighters of legally organized volunteer fire departments which have been certified pursuant to Article 2 of Chapter 3 of Title 25. Such license plate shall be inscribed with such letters, numbers, words, symbols, or a combination thereof as determined by the commissioner to identify the owner as a certified firefighter. The chiefs of the various fire departments shall furnish to the commissioner a list of the certified firefighters of their fire departments who reside in Georgia which list shall be updated as necessary. The funds raised by the sale of this license plate shall be deposited in the general fund.

(B) Should a certified firefighter who has been issued a special and distinctive license plate be separated from such firefighter's department for any reason other than retirement from employment, the chief of such fire department shall obtain the separated member's license plate at the time of the separation and shall

forward same to the commissioner along with a certificate to the effect that such person has been separated, and thereupon the commissioner shall reissue a regular license plate, at no additional charge, to such former certified firefighter to replace the special and distinctive plate. Should a certified firefighter return to service with the same or another fire department, the chief of such fire department shall likewise secure the regular license plate of such person and return same to the commissioner, along with a certificate to the effect that such person has become a member of the fire department, and the effective date thereof, whereupon the commissioner shall, upon application and upon the payment of a \$35.00 manufacturing fee and all other applicable registration and licensing fees at the time of registration, reissue a special and distinctive license plate to such new member to replace the returned regular plate. Upon such request for a change in plate for a certified firefighter who is separated from a fire department, the chief of the fire department shall furnish such member with a copy of the chief's letter to the commissioner requesting the appropriate change in plate, which copy of such letter may be used by such member pending the issuance of the new plate.

(C) Motor vehicle owners who were firefighters certified pursuant to Article 1 of Chapter 4 of Title 25 or were members of fire departments certified pursuant to Article 2 of Chapter 3 of Title 25 and who retired from employment as such shall continue to be eligible for the firefighter license plates issued under this paragraph the same as if they continued to be certified and employed as firefighters. Whenever such a certified firefighter who has been issued a special and distinctive license plate is retired from employment with such firefighter's department, the chief of such fire department shall forward to the commissioner a certificate to the effect that such person has been retired.

(D) The spouse of a deceased firefighter shall continue to be eligible to be issued a distinctive special firefighter's license plate as provided in this paragraph so long as such person does not remarry.

(10) A special license plate supporting Rotary International. The design of the special license plate, excepting only the Rotary International logo and motto "Service Above Self" and the years 1905-2005 and any other part of the design owned by others and licensed to the state, shall be owned solely by the State of Georgia for its exclusive use and control, except as authorized by the commissioner. The funds raised by the sale of this license plate shall be deposited in the general fund.

(11) A special license plate for any Georgia resident who is the owner of a private passenger motor vehicle and provides proof of

certification or licensure by the State of Georgia as an emergency medical technician, paramedic, or owner of a licensed ambulance service in the State of Georgia promoting the EMS Star of Life Symbol. Such license plate shall display the National Highway Traffic Safety Administration's EMS Star of Life Symbol and the initials "EMS." The funds raised by the sale of this license plate shall be deposited in the general fund. (Code 1981, § 40-2-86.22, enacted by Ga. L. 2006, p. 421, § 1/HB 710; Ga. L. 2007, p. 668, § 7/SB 81; Code 1981, § 40-2-86.1, as redesignated by Ga. L. 2010, p. 9, § 1-77/HB 1055; Ga. L. 2012, p. 155, § 7/HB 732; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2012 amendment, effective July 1, 2012, added the proviso at the end of subsection (d).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (l)(6).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 40-2-86.19, as enacted by Ga. L. 2006, p. 421, § 1/HB 710, was redesignated as Code Section 40-2-86.1.

Pursuant to Code Section 28-9-5, in 2006, "period" was inserted following "during the" in the first sentence of subsection (i).

Pursuant to Code Section 28-9-5, in 2010, "which has been" was substituted for "which as been" in the second sentence of paragraph (l)(8).

Editor's notes. — Ga. L. 2007, p. 668, § 7/SB 81, which amended this Code section, purported to add paragraphs (l)(5) and (l)(6) but actually only added paragraph (l)(5).

This Code section formerly pertained to license plates commemorating square and round dancers. The former Code section was based on Code 1981, § 40-2-86.1, enacted by Ga. L. 1997, p. 1559, § 4, and was repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

40-2-86.2. License plates for Shrine hospitals for children.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Code 1981, § 40-2-86.2, enacted by Ga. L. 1997, p. 1559, § 4.

40-2-86.3. License plates commemorating Civil War battlefields and historic sites.

Repealed by Ga. L. 2006, p. 1094, § 6, effective January 1, 2007. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of this Code section designation.

Editor's notes. — This Code section was based on Code 1981, § 40-2-86.3, enacted by Ga. L. 1997, p. 1559, § 4; Ga. L. 1998, p. 1179, § 29. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of this Code section. For current provi-

sions regarding this license plate, see Code Section 40-2-86(m)(3).

Ga. L. 2006, p. 1094, § 13/HB 1053, not codified by the General Assembly, provides for the repeal of this Code section effective January 1, 2007, only upon rati-

fication of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L.

2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

40-2-86.4. License plates supporting public schools.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Code 1981, § 40-2-86.4, en-

acted by Ga. L. 1997, p. 1559, § 4; Ga. L. 1998, p. 1179, § 30.

40-2-86.5. Special license plates honoring educators; requirements; copyright; issuance; use of funds; transfer of plates.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Code 1981, § 40-2-86.5, enacted by Ga. L. 2000, p. 768, § 1. For

current provisions regarding this license plate, see Code Section 40-2-86(1)(7).

40-2-86.6. License plate promoting conservation and enhancement of trout populations.

Repealed by Ga. L. 2006, p. 1094, § 7, effective January 1, 2007. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of this Code section designation.

Editor's notes. — This Code section was based on Code 1981, § 40-2-86.6, enacted by Ga. L. 2001, p. 479, § 2. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of this Code section. For current provisions regarding this license plate, see Code Section 40-2-86(1)(3).

Ga. L. 2006, p. 1094, § 13/HB 1053, not codified by the General Assembly, pro-

vides for the repeal of this Code section effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

40-2-86.7 through 40-2-86.12.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — These Code sections relating to special license plates supporting the National Rifle Association, breast cancer related programs for the medically indigent, Rotary International, police officers wounded in the line of duty, the Benevolent and Protective Order of Elks,

and the EMS Star of Life Symbol, were based on Ga. L. 2002, p. 1019, § 1; Ga. L. 2002, p. 1090, § 1; Ga. L. 2004, p. 757, § 1; Ga. L. 2005, p. 1159, § 6/SB 168; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2006, p. 665, § 1/HB 1006. For current provisions regarding these license plates, see Code

40-2-86.12 REGISTRATION/LICENSING OF MOTOR VEHICLES 40-2-86.17

Sections 40-2-86(m)(9) (breast cancer);
40-2-86.1(l)(10) (Rotary International);
and 40-2-86.1(l)(11) (EMS Star of Life).

40-2-86.13. Special license plates promoting historic preservation efforts.

Repealed by Ga. L. 2006, p. 1094, § 8, effective January 1, 2007. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of this Code section designation.

Editor's notes. — This Code section was based on Code 1981, § 40-2-86.13, enacted by Ga. L. 2005, p. 1159, § 6/SB 168. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of this Code section. For current provisions regarding this license plate, see Code Section 40-2-86(m)(4).

Ga. L. 2006, p. 1094, § 13/HB 1053, not

codified by the General Assembly, provides for the repeal of this Code section effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

40-2-86.14. Special license plates for licensed physicians.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Code 1981, § 40-2-86.14,

enacted by Ga. L. 2005, p. 1159, § 6/SB 168.

40-2-86.15 through 40-2-86.17.

Repealed by Ga. L. 2006, p. 1094, §§ 9-11, effective January 1, 2007. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of these Code section designations.

Editor's notes. — These Code sections relating to special license plates promoting NASCAR or promoting bicycle safety, plates honoring families with a member serving in the military, and "Support Georgia Troops" were based on Code 1981, § 40-2-86.15, enacted by Ga. L. 2005, p. 1159, § 6/SB 168; § 40-2-86.16, enacted by Ga. L. 2005, p. 1477, § 1/SB 255; § 40-2-86.17, enacted by Ga. L. 2005, p. 1481, § 1/SB 257. Ga. L. 2010, p. 9, § 1-75/HB 1055, repealed the reservation of these Code sections. For current provisions regarding these license plates, see Code Section 40-2-86(m)(8) (NASCAR);

40-2-86(m)(5) (bicycle safety);
40-2-86(m)(6) (honoring families with a member in the military); and
40-2-86(m)(7) ("Support Georgia Troops").

Ga. L. 2006, p. 1094, § 13/HB 1053, not codified by the General Assembly, provides for the repeal of these Code sections effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

40-2-86.18. Redesignated.

Editor's notes. — Ga. L. 2010, p. 9, 40-2-86.18 as present Code Section § 1-76/HB 1055, effective May 12, 2010, 40-2-85.3.
redesignated former Code Section

40-2-86.19. Special license plates supporting the Global War on Terrorism and Operation Enduring Freedom.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section enacted by Ga. L. 2006, p. 801, § 1/SB was based on Code 1981, § 40-2-86.19, 539.

40-2-86.20. Special license plates supporting the Global War on Terrorism and Iraqi freedom.

Repealed by Ga. L. 2010, p. 9, § 1-75/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section enacted by Ga. L. 2006, p. 803, § 1/SB was based on Code 1981, § 40-2-86.20, 538.

40-2-86.21. Redesignated.

Editor's notes. — Ga. L. 2010, p. 9, 40-2-86.21 as present Code Section 40-2-86.21 as § 1-76, effective May 12, 2010, redesignated former Code Section 40-2-86.21 as present Code Section 40-2-86.

40-2-86.22. Redesignated.

Editor's notes. — Ga. L. 2010, p. 9, 40-2-86.22 as present Code Section § 1-76/HB 1055, effective May 12, 2010, 40-2-86.1.
redesignated former Code Section

ARTICLE 3A**RECIPROCAL AGREEMENTS FOR REGISTRATION OF
COMMERCIAL VEHICLES****40-2-87. Definitions.**

As used in this article, the term:

(1) "Allocated vehicle" means a vehicle to which a particular jurisdiction's basic registration plate or apportioned registration plate is attached upon payment of the jurisdiction's full basic registration fee. A portion of each fleet of one-way vehicles is allocated to each jurisdiction into or through which the fleet travels although each vehicle of the fleet need not enter every jurisdiction.

(2) "Apportionable fee" means any periodic recurring fee required for licensing or registering vehicles, including, but not limited to, registration fees, license fees, or weight fees.

(3) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government owned vehicles, used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and which is:

(A) A power unit having a gross vehicle weight in excess of 26,000 pounds;

(B) A power unit having three or more axles, regardless of weight; or

(C) Used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles or combinations thereof having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles and buses used in transportation of chartered parties may be proportionally registered at the option of the registrant.

(4) "Auxiliary axle" means an auxiliary undercarriage assembly with a fifth wheel and tow bar used to convert a semitrailer to a full trailer.

(5) "Axle" means an assembly of a vehicle consisting of two or more wheels whose centers are in one horizontal plane, by means of which a portion of the weight of a vehicle and its load, if any, is continually transmitted to the roadway. For purposes of registration under the International Registration Plan, an axle is any such assembly whether or not it is load-bearing only part of the time. For example, a single-unit truck with a steering axle and two axles in a rear-axle assembly is an apportionable vehicle even though one of the rear axles is a so-called dummy, drag, tag, or pusher type axle.

(6) "Base jurisdiction" means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet, and where operational records of such fleet are maintained or can be made available in accordance with the provisions of this article.

(7) "Base plate" means the plate issued by the base jurisdiction and shall be the only registration identification plate issued for the vehicle by any member jurisdiction. Base plates shall be identified by

having the word "apportioned" or "PRP" and the jurisdiction's name on the plate. The numbering system and color shall be determined by the issuing jurisdiction.

(8) "Chartered party" means a group of persons who, pursuant to a common purpose and under a single contract and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Interstate Commerce Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

(9) "Commissioner" means the jurisdiction official in charge of registration of vehicles and means, for the State of Georgia, the state revenue commissioner.

(10) "Established place of business" means a physical structure owned, leased, or rented by the fleet registrant. The physical structure shall be designated by a street number or road location, be open during normal business hours, and have located within it:

(A) A telephone or telephones publicly listed in the name of the fleet registrant;

(B) A person or persons conducting the fleet registrant's business; and

(C) The operational records of the fleet, unless such records can be made available in accordance with the provisions of this article.

(11) "Fleet" means one or more apportionable vehicles.

(12) "In-jurisdiction miles" means the total number of operating miles accrued by a fleet of apportioned vehicles in a jurisdiction during the preceding year. In those cases where the registrant operated a fleet of apportioned vehicles in jurisdictions that require no apportionment and grant reciprocity, the base jurisdiction may add such miles to the in-jurisdiction miles.

(13) "Interjurisdictional movement" means vehicle movement between or through two or more jurisdictions.

(14) "Intrajurisdictional movement" means vehicle movement from one point within a jurisdiction to another point within the same jurisdiction.

(15) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or a state, province, or territory of another country.

(16) "Long term" means any period of time exceeding 29 days.

(17) "Motor carrier audit" means a physical examination of a motor carrier's operational records including source documentation to verify fleet mileage and accuracy of a carrier's record-keeping system.

(18) "Operational records" means documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets, and drivers' logs.

(19) "Owner-operator" means an equipment lessor who leases his vehicular equipment with driver to a carrier.

(20) "Pool fleet" means a fleet of rental company trailers and semitrailers having a gross weight in excess of 26,000 pounds and used solely in pool operation with no permanent base.

(21) "Preceding year" means the period of 12 consecutive months immediately prior to July 1 of the year immediately preceding the commencement of the registration or license year for which apportioned registration is sought.

(22) "Reciprocity" means that an apportionable vehicle properly registered under this article shall be exempt from further registration by any other member jurisdiction.

(23) "Reciprocity agreement" means an agreement, arrangement, or understanding governing the reciprocal grant of rights and privileges to vehicles which are based in and properly registered under the applicable laws of the jurisdictions which are parties to such an agreement, arrangement, or understanding.

(24) "Recreational vehicle" means as used in this article a vehicle used for personal pleasure or travel by an individual or his family.

(25) "Registrant" means a person, firm, or corporation in whose name or names a vehicle is properly registered.

(26) "Registration year" means the 12 month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

(27) "Restricted plate" means a license plate that has time (less than a registration year), geographic area, mileage, or commodity restrictions.

(28) "Service representative" means a person who furnishes facilities and services including sales, warehousing, motorized equipment, and drivers under contract or other arrangements to a carrier for transportation of property by a household goods carrier.

(29) "Total distance" means the total number of miles or kilometers traveled by a fleet of apportioned vehicles in all jurisdictions during

the preceding year. For purposes of motor bus apportionment, total distance shall be calculated as provided for fleets.

(30) "Trip-lease" means a lease of vehicular equipment to a carrier or lessee for a single interjurisdictional movement. The term may also include a similar intrajurisdictional movement where such movement is authorized under the laws of the jurisdiction. (Code 1981, § 40-2-87, enacted by Ga. L. 1990, p. 1883, § 2; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 3-14; Ga. L. 2005, p. 334, § 14-7/HB 501; Ga. L. 2006, p. 72, § 40/SB 465.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this Code section, which was enacted as Code Section 40-2-80, was renumbered as Code

Section 40-2-87, since Ga. L. 1990, p. 2048, § 2, also enacted a Code Section 40-2-80.

JUDICIAL DECISIONS

Cited in Pitts v. Gofer Courier Serv., 216 Ga. App. 219, 453 S.E.2d 505 (1995);

Upshaw v. Hale Intermodal Transp. Co., 224 Ga. App. 239, 480 S.E.2d 277 (1997).

40-2-88. Reciprocal agreements for registration of commercial vehicles on apportionment basis; waiver of penalties.

(a) In addition to and regardless of the provisions of Article 3 of this chapter or any other provisions of law relating to the operation of motor vehicles over the public highways of this state, the commissioner is authorized to enter into reciprocal agreements or plans on behalf of the State of Georgia with the appropriate authorities of any of the states of the United States, the District of Columbia, a state or province of any foreign country, or a territory or possession of the United States or any foreign country providing for the registration of commercial vehicles on an apportionment basis and may, in the exercise of this authority, enter and become a member of the International Registration Plan developed by the American Association of Motor Vehicle Administrators. Any such reciprocal agreement or plan may provide for but shall not be limited to the following provisions: (1) full reciprocity in accordance with such agreement or plan for commercial vehicles not based in Georgia, which vehicles are operated in interstate commerce or a combination of interstate and intrastate commerce and are of specified types or weights, in exchange for equivalent reciprocity for Georgia based commercial vehicles; (2) reciprocal exchange of audits of records of the owners of such commercial vehicles by the states participating in any such agreement or plan; and (3) any other matters which would facilitate the administration of such agreement or plan, including exchange of information for audits enforcement activities and collection and disbursement of proportional registration fees for other jurisdictions in the case of Georgia based commercial vehicles.

(b) Any reciprocity agreement, arrangement, or declaration relating to commercial vehicles in effect between this state and any jurisdiction not a party to such reciprocal agreement or plan or which relates to any matters not covered in such reciprocal agreement or plan shall continue in force and effect until specifically revoked or amended as provided by law.

(c)(1)(A) Applications for registration or renewal of registration under the International Registration Plan may be submitted during the period of December 1, 2001, to February 15, 2002, for registration under such plan which shall be valid for a period beginning January 1, 2002, and ending at the conclusion of the applicable registration period specified in division (a)(1)(A)(ii) of Code Section 40-2-21 which occurs between July 1, 2002, and June 30, 2003.

(B) On and after July 1, 2002, applications for annual registration or renewal of registration under the International Registration Plan shall be submitted during the applicable registration period specified in division (a)(1)(A)(ii) of Code Section 40-2-21.

(2) Any owner of a vehicle required to be registered under the International Registration Plan who does not apply for registration on or before the first day of the registration period for such vehicle as prescribed in paragraph (1) of this subsection, in addition to any other penalty which may be imposed if such vehicle is not timely registered in accordance with paragraph (1) of this subsection, shall be subject to a late application penalty of 10 percent of the total registration fees due this state. Additionally, the owner of a vehicle required to be registered under the International Registration Plan who does not pay to the commissioner the registration fees due this state on or before the last day of the registration period shall be subject to a late payment penalty in accordance with Code Section 40-2-40. The commissioner may provide by rule or regulation for waiver of penalties provided by this paragraph in cases where failure to timely make application or timely pay fees is due to force majeure.

(d) The provisions of Code Sections 40-2-9, 40-2-22, 40-2-23, 40-2-24, and 40-2-26 shall not apply to vehicles registered under this Code section, except that:

(1) Registration under the International Registration Plan shall not relieve a registrant from any other taxes due, except as otherwise provided in subsection (h) of Code Section 40-2-152, and registration shall be denied any such vehicle if any Georgia ad valorem property taxes due upon such vehicle are unpaid;

(2) No vehicle registration or renewal thereof shall be issued to any motor vehicle subject to the heavy vehicle tax unless the owner of

the motor vehicle provides satisfactory proof that the heavy vehicle tax imposed by Subchapter D of Chapter 36 of the Internal Revenue Code has been paid for the federal tax year during which the application for registration or renewal thereof is made or that a heavy motor vehicle tax return has been filed with the Internal Revenue Service for the federal tax year during which the application for registration or renewal thereof is made; and

(3) No vehicle registration or renewal thereof shall be issued without the commissioner's having first received certification that the vehicle sought to be licensed is insured in compliance with the mandatory provisions of Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act."

(e) In the event of conflict between the provisions of this Code section or any agreement entered into under the provisions of this Code section and any other law or provision on this subject, the provisions of this Code section or any agreement entered into under the provisions of this Code section shall prevail.

(f) Each motor carrier registered under the International Registration Plan shall maintain and keep, for the current year and the three preceding years, such pertinent records and papers as may be required by the commissioner for the reasonable administration of this chapter. If a registrant fails to make records available to the commissioner upon proper request or if any registrant fails to maintain records from which its true liability may be determined, the commissioner may, 30 days after written demand for production of or access to the records or notification of insufficient records, impose an assessment of liability based on the commissioner's estimate of the true liability of such registrant as determined from information furnished by the registrant, information gathered by the commissioner at his or her own instance, information available to the commissioner concerning operations by similar registrants, and such other pertinent information as may be available to the commissioner.

(g) The commissioner or any authorized agent of the commissioner is authorized to examine the records, books, papers, and equipment of any motor carrier that are deemed necessary to verify the truth and accuracy of any statement or report and ascertain whether the tax imposed by Code Section 40-2-152 and the International Registration Plan has been properly paid. The duties and powers of the commissioner as specified in Code Sections 48-2-7 through 48-2-11 are expressly made applicable to this Code section.

(h) In lieu of full registration under the International Registration Plan, trip permit registration may be issued for any vehicle or combination of vehicles which could be lawfully operated in the state if full

registration or apportioned registration were obtained. A person desiring a trip permit shall make application therefor as prescribed by the commissioner. A trip permit shall be issued for the sum of \$30.00. Any vehicle or combination of vehicles for which a trip permit has been issued may be operated in interstate or intrastate commerce in Georgia for a period of 72 hours from the time of issuance.

(i) The department is authorized and empowered to promulgate and to enforce such rules and regulations, including without limitation rules and regulations providing for appointment and regulation of private tag agents and use of electronic and direct registration methods, and to publish such forms as may be necessary to carry out the provisions of the International Registration Plan or any other agreement entered into under the authority set forth in this Code section.

(j) Any person who violates any provision of this Code section shall, in addition to any other penalties provided by any other law, be punished by a fine of not less than \$100.00 and not more than \$250.00. (Code 1981, § 40-2-88, enacted by Ga. L. 1990, p. 1883, § 2; Ga. L. 1992, p. 2978, § 3; Ga. L. 1999, p. 741, § 2; Ga. L. 2000, p. 951, § 3-15; Ga. L. 2001, p. 1173, § 1-3; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 631, § 40; Ga. L. 2013, p. 32, § 1/HB 463.)

The 2013 amendment, effective April 10, 2013, inserted “, except as otherwise provided in subsection (h) of Code Section 24 40-2-152,” in the middle of paragraph (d)(1). See editor’s note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this Code section, which was enacted as Code Section 40-2-81, was renumbered as Code Section 40-2-88, since Ga. L. 1990, p. 2048, § 2, also enacted a Code Section 40-2-80 and references to Code Sections 40-2-22, 40-2-23, 40-2-24, and 40-2-26 were substituted for references to Code Sections 40-2-21, 40-2-22, 40-2-23, and 40-2-25 in subsection (d).

Pursuant to Code Section 28-9-5, in 1992, “commissioner’s” was substituted for “commissioner” in paragraph (d)(3).

Pursuant to Code Section 28-9-5, in 2001, a comma was inserted following “December 1, 2001” in subparagraph (c)(1)(A).

Editor’s notes. — Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all registration, annual, or license fees of apportionable vehicles and ad valorem and alternative ad valorem taxes of apportionable vehicles on or after January 1, 2014.

JUDICIAL DECISIONS

Cited in *Pitts v. Gofer Courier Serv.*, 216 Ga. App. 219, 453 S.E.2d 505 (1995).

40-2-88.1. Electronic filing system for registration of commercial vehicles.

The department shall commence to initiate an electronic filing system for registration of commercial vehicles under the International Registration Plan by January 1, 2008, including temporary operating

permits valid for any length of time; provided, however, that in no event shall the total number of days of all temporary operating permits issued for a vehicle exceed 60 days from the registration application filing date. (Code 1981, § 40-2-88.1, enacted by Ga. L. 2007, p. 639, § 1/SB 77.)

Code Commission notes. — Pursuant to Code Section 40-2-88.1 and the subsection to Code Section 28-9-5, in 2007, Ga. L. 2007, p. 639, § 1/SB 77, was designated as (d) designation was deleted.

40-2-89. Vehicle ineligible for registration if prohibited from being operated in interstate commerce.

Any vehicle which is prohibited by any federal agency acting pursuant to federal law, rule, or regulation from being operated in interstate commerce shall not be eligible for registration under this article, and the commissioner shall suspend or revoke such registration for any vehicle so prohibited from operating. (Code 1981, § 40-2-89, enacted by Ga. L. 2001, p. 1173, § 1-4; Ga. L. 2005, p. 334, § 14-8/HB 501.)

ARTICLE 4

VEHICLES OF NONRESIDENTS

40-2-90. Operation of vehicles registered in other states.

(a) For purposes of this Code section:

(1) “Nonresident” means any person who does not reside in the State of Georgia but who accepts employment or engages in any trade, profession, or occupation in the state or enters his children in the public schools of this state.

(2) “Visitor” means any person who does not reside in the State of Georgia and who is not a nonresident as defined in this subsection.

(b)(1) Motor vehicles owned by nonresidents may be used and operated on the public streets and highways for a period of 30 days without registering said motor vehicles in the State of Georgia.

(2) Motor vehicles owned by visitors may be used and operated on the public streets and highways, for pleasure purposes only, for a period of 90 days without registering said motor vehicles in the State of Georgia.

(3) To be eligible for the exemptions provided for in paragraph (1) or (2) of this subsection, a nonresident or visitor shall have fully complied with the laws relating to the registration of motor vehicles of the state or territory wherein he resides, and the registration number and initial letter of such state or territory shall be displayed and plainly visible on such motor vehicles.

(4) No resident of Georgia shall be entitled to the exemptions provided for in paragraph (1) or (2) of this subsection.

(c) Notwithstanding subsection (a) of this Code section, a nonresident student who is a resident of a state which is a member of the Multistate Reciprocity Agreement shall be exempt from the requirement of registering his motor vehicle in this state in accordance with the provisions of said Multistate Reciprocity Agreement. (Ga. L. 1927, p. 226, § 10; Code 1933, § 68-221; Ga. L. 1973, p. 342, § 1; Ga. L. 1978, p. 927, § 1; Ga. L. 1982, p. 720, § 1; Ga. L. 1983, p. 638, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 2.)

Cross references. — Rights of citizens of other states while in Georgia generally, § 1-2-9.

JUDICIAL DECISIONS

Regularly driving out-of-state vehicles evidence of nonresidency. — Since residents of Georgia are prohibited from operating out-of-state licensed motor vehicles in Georgia, a person who regularly drives an out-of-state licensed motor vehicle in Georgia has already determined and was evidencing the person's determination that the person was not a resident of Georgia for purposes of voting. *McCoy v. McLeroy*, 348 F. Supp. 1034 (M.D. Ga. 1972).

Stopping visiting motorists for traffic violations. — Paragraph (b)(2) of O.C.G.A. § 40-2-90 gives visitors to the state the right to use and operate motor vehicles on the public streets and highways for pleasure purposes only for 90 days without registering the vehicle, but this does not restrict a law enforcement officer from performing the officer's duty when stopping a visiting motorist for a

traffic violation. *Coop v. State*, 186 Ga. App. 578, 367 S.E.2d 836, cert. denied, 186 Ga. App. 917, 367 S.E.2d 836 (1988).

State need not prove current owner of vehicle. — State presented sufficient evidence that the defendant operated a motor vehicle with an expired Mississippi tag on a public street of Georgia in violation of O.C.G.A. § 40-2-8(a). Although the evidence did not show to whom the vehicle had been registered in Mississippi or whether the defendant had recently purchased the vehicle, the evidence did authorize a finding that, regardless of who the current owner of the vehicle might actually be, the vehicle was not an automobile which was otherwise exempt from the requirement of registration in this state. *Keyser v. State*, 187 Ga. App. 95, 369 S.E.2d 309 (1988).

Cited in *De Bord v. Procter & Gamble Distrib. Co.*, 58 F. Supp. 157 (N.D. Ga. 1943).

OPINIONS OF THE ATTORNEY GENERAL

"License" construed. — License as referred to in former Code 1933, § 68-221 was the operator's permit or license which was issued by the Georgia State Patrol (now Department of Public Safety). 1969 Op. Att'y Gen. No. 69-156 (see O.C.G.A. § 40-2-90).

Nonresident returning to residence each night. — Person entering the State of Georgia daily, but returning to the state

of the person's residence each night, is not required to purchase a Georgia motor vehicle license. 1958-59 Op. Att'y Gen. p. 211.

Subjecting nonresidents to fees. — Motor vehicles owned by nonresidents are not subject to motor vehicle license fees for a period of 30 days after coming within the state, provided the vehicle is properly registered in the state of their residence;

this 30-day period would apply to all motor vehicles owned by nonresidents, regardless of whether or not the nonresident was a contractor engaged in road building within this state. 1950-51 Op. Att'y Gen. p. 195.

Nonresident's vehicle used in same manner as other vehicles. — When the owner of a motor vehicle driven in this state is not a resident of this state, and the motor vehicle is in this state for use here, and is, in fact, used in much the same manner as other motor vehicles are used in Georgia, that motor vehicle is taxable in Georgia. 1968 Op. Att'y Gen. No. 68-39.

Foreign country plates prohibited. — Automobile cannot be operated upon state public highways under license plate issued by foreign country. 1960-61 Op. Att'y Gen. p. 295.

Operation by resident of vehicle owned by nonresident and registered in another state was a violation of former Code 1933, § 68-221 (see O.C.G.A. § 40-2-90). 1968 Op. Att'y Gen. No. 68-258.

Nonresident basing automobile in Georgia. — An out-of-state resident basing one's automobile in Georgia pursuant to a consultant contract with a Georgia business must purchase a Georgia license

for that person's vehicle in the county in which the vehicle is based. 1962 Op. Att'y Gen. p. 322.

Civilian employees of government assigned to duty in Georgia are not exempt from section's provisions. 1958-59 Op. Att'y Gen. p. 208.

Duties of nonresident students. — Nonresident student is required to register vehicle owned or operated by the student and obtain license within 30 days from the time the student enters the state. 1970 Op. Att'y Gen. No. 70-40 (decided prior to 1982 amendment).

Student returning home on daily basis. — If a student nonresident who drives the student's parents' automobile while attending a private school in Georgia returns home on a daily basis, no purchase of a Georgia license is required. 1975 Op. Att'y Gen. No. U75-12.

Nonresident service personnel stationed in Georgia. — Federal provision removes nonresident service personnel stationed in Georgia from the operation of former Code 1933 § 68-221 (see O.C.G.A. § 40-2-90) and exempts service personnel from the obligation of securing license plates in Georgia so long as the service personnel obtain license plates from the state of their domicile. 1957 Op. Att'y Gen. p. 186.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 61 et seq., 90.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 180, 184, 191.

40-2-91. Commissioner authorized to negotiate reciprocal agreements with adjoining states.

The commissioner is directed to negotiate with the proper authorities of adjoining states and consummate, as speedily as is practicable, reciprocal agreements, whereby residents of such states operating motor vehicles licensed in their respective states may have such privileges and exemptions in the operation of such motor vehicles as residents of this state may have and enjoy in such adjoining states in the operation of motor vehicles duly licensed in this state. In the making of such agreements, the commissioner shall have due regard for the advantage and convenience of the motor vehicle owners and other citizens of this state and particularly those who reside near the borders

of adjoining states. (Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, §§ 1, 2; Code 1933, § 68-217; Ga. L. 1990, p. 2048, § 2.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

OPINIONS OF THE ATTORNEY GENERAL

License plate required for intra-state undertaking. — When use of highways is purely intrastate undertaking, vehicle must have Georgia license plate affixed. 1962 Op. Att'y Gen. p. 321.

Foreign-state taxicabs in interstate commerce. — Under the "Multi-State Reciprocity Agreement," Alabama-based taxicabs engaged in purely interstate commerce in bringing passengers over the border are not required to obtain Georgia licenses. 1962 Op. Att'y Gen. p. 321.

Conduct of trucking association's

mother state determinative. — Conduct of the licensing authorities of Georgia in relation to out-of-state truck lines operating in Georgia depends wholly and entirely upon the conduct of the mother state of the trucking association, that is, the state under whose laws the trucking association is operating; the reciprocal agreement between that state and the State of Georgia determines acts of the state agents in either requiring or not requiring the trucks to obtain a Georgia for hire tag. 1950-51 Op. Att'y Gen. p. 188.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 190, 307 et seq.

40-2-92. Reciprocal agreements subject to confirmation by General Assembly.

Any and all reciprocal agreements entered into by the commissioner shall be subject to confirmation by Act or resolution of the General Assembly and shall not be of force or effect until the passage of such Act or resolution and its approval by the Governor except such agreement or agreements as may be entered into while the General Assembly is not in session. (Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, § 3; Code 1933, § 68-218; Ga. L. 1990, p. 2048, § 2.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 190, 307 et seq.

40-2-93. Reciprocal agreements while General Assembly not in session.

All reciprocal agreements entered into by the commissioner while the General Assembly is not in session shall be approved by the Governor. Such agreements shall be submitted by the commissioner to the General Assembly not later than the tenth day of its next session,

whereupon the General Assembly may confirm or reject such agreement or agreements by appropriate Act or resolution approved by the Governor. Pending passage and approval of such Act or resolution of confirmation or rejection, the agreement or agreements made during the adjournment of the General Assembly shall be of full force and effect according to their terms. (Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, §§ 3, 5; Code 1933, §§ 68-218, 68-220; Ga. L. 1990, p. 2048, § 2.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles,
§ 199.

40-2-94. Publication of terms of reciprocal agreements; rules and regulations for enforcement.

The commissioner shall give proper publicity to the terms of every agreement entered into pursuant to Code Sections 40-2-91 through 40-2-93 and is authorized and empowered to promulgate rules and regulations for the observance and enforcement of the terms of such agreement, which rules and regulations shall have the force and effect of law. (Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, § 4; Code 1933, § 68-219; Ga. L. 1990, p. 2048, § 2.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles,
§§ 190, 307 et seq.

40-2-95. Code Sections 40-2-91 through 40-2-93 inapplicable to motor vehicles for hire.

No reciprocal agreement shall be made or approved under Code Sections 40-2-91 through 40-2-93 which relate to motor vehicles operated for hire, nor shall Code Sections 40-2-91 through 40-2-93 apply to such vehicles. (Ga. L. 1931, p. 7, § 84; Ga. L. 1931, p. 216, § 5; Code 1933, § 68-220; Ga. L. 1990, p. 2048, § 2.)

RESEARCH REFERENCES

ALR. — State regulation of motor vehicle rental ("you-drive") business, 60 ALR4th 784.

ARTICLE 5

UNREGISTERED MOTOR TRUCKS

OPINIONS OF THE ATTORNEY GENERAL

Other state not in reciprocity imposing highway use tax. — Truck or trailer must carry the license plate of the state from which the truck or trailer operates and should not be allowed to carry plates of other states; however, if the trucks or trailers do operate with license plates from more than one state and one of the states imposes a highway use tax and is not in reciprocity with the State of Georgia, then the tax imposed under the unregistered motor truck provisions is applicable to that truck or trailer. 1954-56 Op. Att’y Gen. p. 475 (see O.C.G.A. Art. 5, Ch. 2, T. 40).

Reciprocity determined by examining agreement. — In order to determine whether or not a motor vehicle is entitled to reciprocity while operating in Georgia, it is necessary to examine the reciprocity agreement that this state has with the state in which that vehicle is based. 1965-66 Op. Att’y Gen. No. 66-227.

Trucks which are not subject to reg-

istration. — Motor trucks employed by a person, firm, or corporation for the transportation of merchandise in the conduct of that person’s or its own business, and which are not for hire, are not subject to or required to be registered. 1954-56 Op. Att’y Gen. p. 484.

Trailers not entitled to tax reduction. — Trailers liable for tax are not entitled to reduction in this tax under Ga. L. 1937-38, Ex. Sess., p. 259. 1954-56 Op. Att’y Gen. p. 476 (see § 40-2-151).

Jury trial for violation of article. — Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 6 (see O.C.G.A. § 40-2-114) contemplated a trial by jury and a conviction or acquittal of persons accused of violating the provisions of the unregistered motor trucks law (see O.C.G.A. Art. 5, Ch. 2, T. 40); therefore, it would be necessary for a warrant to be sworn out against an alleged violator and a trial held in a court with appropriate jurisdiction. 1954-56 Op. Att’y Gen. p. 476.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 27 et seq.

40-2-110. “Motor truck” defined.

As used in this article, the term “motor truck” means any motor vehicle having a gross weight of 18,000 pounds or over which is designed and used for the transportation of merchandise or freight. (Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 5; Ga. L. 1990, p. 2048, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 183 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 8.

40-2-111. Highway use permit required for certain unregistered motor trucks; application; fee; identification tag to be displayed and permit to be carried in truck.

In addition to any other provision of law relating to registration of motor vehicles or fees paid therefor, a person owning or operating a motor truck, as defined in Code Section 40-2-110, upon the highways of this state, which is not registered in this state, shall apply to the commissioner for a highway use permit for each such motor truck to be so operated. Application shall be made upon a form prescribed by the commissioner and shall set forth such information as the commissioner may require. The application shall be accompanied by a permit fee of not more than \$200.00, as determined under the rules and regulations of the commissioner, using a comparison of such fees charged by the state or province of registration of the motor truck, for each motor truck listed in the application. The commissioner shall issue a permit and an identification tag, plate, or decal for each such motor truck, which tag, plate, or decal shall be of such size and design and contain such information as the commissioner shall prescribe. Any such permit and tag, plate, or decal shall be valid for the same period of time as provided by law for license plates issued to motor vehicles in Georgia. Such permits shall be carried in the motor truck and the tag, plate, or decal shall be affixed to the motor truck and at all times be visible and legible. (Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 1; Ga. L. 1984, p. 1199, § 1; Ga. L. 1990, p. 2048, § 2.)

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. §§ 40-2-111 and 40-2-112 unconstitutionally discriminate against intrastate commerce because the statutes impose taxes on vehicles registered in certain states which are not imposed on vehicles registered in the State of Georgia. *State v. Private Truck Council of Am., Inc.*, 258 Ga. 531, 371 S.E.2d 378 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 85 et seq.
C.J.S. — 60 C.J.S., Motor Vehicles, § 8.

40-2-112. Additional fee for each round trip into state.

In addition to the permit fee provided in Code Section 40-2-111, a person operating a motor truck on the highways of this state, which truck is registered in a state or province which imposes upon motor trucks registered in this state a tax, fee, or toll for the privilege of operating such truck upon the highways of such state or province, which is in addition to any tax, fee, or toll imposed upon gasoline or

other motor fuel purchased within such state or province, or registration fee, shall pay a fee of not more than \$25.00, as determined under the rules and regulations of the commissioner, using a comparison of such taxes, fees, or tolls charged by the state or province of registration of the motor truck, for each round trip into this state in lieu of a tax computed and applied in the same manner as the tax, fee, or toll of such other state or province so long as such tax, fee, or toll imposed by such other state or province shall remain in force. (Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 2; Ga. L. 1984, p. 1199, § 2; Ga. L. 1990, p. 2048, § 2.)

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. §§ 40-2-111 and 40-2-112 unconstitutionally discriminate against interstate commerce because the statutes impose taxes on vehicles registered in certain states

which are not imposed on vehicles registered in the State of Georgia. *State v. Private Truck Council of Am., Inc.*, 258 Ga. 531, 371 S.E.2d 378 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Vehicles registered in state imposing mere registration fees. — Vehicles traveling in Georgia, registered in another state where the fees imposed are of such a nature as to be considered merely registration fees, and are not in addition to any tax, fee, or toll imposed upon gasoline or motor fuel purchased within that state,

should be required to obtain a Georgia highway use permit and identification tags and stickers pertinent thereto, but should not be required to pay the additional fee for each round trip as imposed by Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 2. 1954-56 Op. Att’y Gen. p. 477 (see O.C.G.A. § 40-2-112).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 90.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 8, 307 et seq.

40-2-113. Collection of taxes and fees; rules and regulations.

The commissioner shall collect the taxes and fees imposed by this article and he is authorized to make such rules and regulations and prescribe such forms as are necessary to carry out this article. (Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 3; Ga. L. 1990, p. 2048, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 90.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 6, 307 et seq.

40-2-114. Unlawful acts; penalties.

(a) It shall be unlawful for any person:

(1) To operate a motor truck subject to this article upon any public highway in this state without first obtaining the permit required under Code Section 40-2-111;

(2) To violate any regulation issued by the commissioner pursuant to the authority granted under this article;

(3) To fail to file any return or report required by the commissioner;

(4) To make a false return or fail to keep records of operations as may be required by the commissioner; or

(5) To make knowingly any false statement in any application for registration.

(b) Any person who violates any provision of this Code section, upon first conviction, shall be punished by a fine of not less than \$100.00 nor more than \$250.00; and upon a second or subsequent conviction, by a fine of not less than \$250.00 nor more than \$500.00, or by imprisonment for not more than 30 days, or both. (Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 6; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 949, § 4; Ga. L. 1990, p. 2048, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Jury trial for violation of statute. — Ga. L. 1953, Nov.-Dec. Sess., p. 343, Part 2, § 6 (see O.C.G.A. § 40-2-114) contemplates a trial by jury and a conviction or acquittal of persons accused of violating the law on unregistered motor trucks (see

O.C.G.A. Art. 5, Ch. 2, T. 40); therefore, it would be necessary for a warrant to be sworn out against an alleged violator and a trial held in a court with appropriate jurisdiction. 1954-56 Op. Att'y Gen. p. 476.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 41, 42.

ARTICLE 6

ADMINISTRATION AND ENFORCEMENT OF CHAPTER

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 218.

40-2-130. Records of certificates of registration.

(a) A record of certificates of registration shall be maintained by the commissioner or the commissioner's duly authorized county tag agent. All certificates of registration shall be issued:

(1) Under a distinctive tag registration number assigned to the vehicle;

(2) Under the identifying number of the vehicle;

(3) Alphabetically, under the name of the owner;

(4) Under the vehicle title number; and

(5) In the discretion of the commissioner, in any other method the commissioner determines.

(b) The commissioner is authorized and empowered to provide for photographic and photostatic recording of certificate of registration records in such manner as he may deem expedient. The photographic or photostatic copies authorized in this subsection shall be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted.

(c) The motor vehicle registration records which the commissioner is required to maintain under this Code section or any other provision are exempt from the provisions of any law of this state requiring that such records be open for public inspection; provided, however, that, subject to subsection (d) of this Code section, the records may be disclosed for use as provided in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, and by the following:

(1) Any licensed dealer of new or used motor vehicles;

(2) Any tax collector, tax receiver, or tax commissioner;

(3) The director of the Environmental Protection Division of the Department of Natural Resources or his or her designee;

(4) Any private person who has met the requirements of Code Section 40-2-25, provided that the information shall be used for the sole purpose of effectuating the registration or renewal of motor vehicles by electronic or similar means and that the private person requesting the information has entered into an agreement to provide electronic services to the commissioner or a county tag agent; provided, further, that the information made available pursuant to this paragraph for such purpose shall be limited to the vehicle identification number, the license tag number, the date of expiration of registration, and the amount of tax owed; and

(5) A person or entity authorized by the commissioner for use in providing notice to the owners of towed or impounded vehicles.

(d) Except as otherwise required in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, personal information furnished under paragraphs (1) through (5) of subsection (c) of this Code section shall be limited to the natural person's name, address, and

driver identification number. The personal information obtained by a business under this Code section shall not be resold or redisclosed for any purposes other than those permitted under the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, without the written consent of the individual. Furnishing of information to a business under this Code section shall be pursuant to a contract entered into by such business and the state which specifies the consideration to be paid by such business to the state for such information and the frequency of updates. (Code 1981, § 40-2-130, enacted by Ga. L. 1990, p. 2048, § 2; Ga. L. 1996, p. 336, § 13; Ga. L. 1997, p. 739, § 3; Ga. L. 1999, p. 334, § 2; Ga. L. 2000, p. 136, § 40; Ga. L. 2000, p. 951, § 3-16; Ga. L. 2003, p. 484, § 1; Ga. L. 2003, p. 597, § 1; Ga. L. 2004, p. 471, § 8; Ga. L. 2008, p. 803, § 1/HB 945.)

OPINIONS OF THE ATTORNEY GENERAL

Access to information in Registration and Title Information System. — Department of Revenue is authorized to provide access to the information contained in the Georgia Registration and Title Information System only for the pur-

poses mandated by the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 et seq., or to those state agencies designated in O.C.G.A. §§ 33-34-9, 40-2-130(c), and 40-3-23(d). 2008 Op. Att'y Gen. No. 2008-2.

40-2-131. Disposition of fees.

Except as provided in Code Section 40-2-33 and Code Section 40-2-88, the full amount of the fees collected under this chapter shall be turned over to the state treasury by the commissioner within 30 days after collection in such manner as the state treasurer may prescribe. (Ga. L. 1927, p. 226, § 21; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-104; Code 1981, § 40-2-130; Ga. L. 1990, p. 1883, § 3; Code 1981, § 40-2-131, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" near the end of this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "40-2-88" was substituted for "40-2-81" near the beginning of this Code section.

40-2-132. Destruction of records by commissioner.

The commissioner, in his discretion, may destroy all motor vehicle records required to be maintained under this chapter, except those of the current year and the two years immediately preceding. (Ga. L. 1925, p. 315, § 1; Ga. L. 1931, p. 7, § 84; Code 1933, § 68-205; Ga. L. 1953, Jan.-Feb. Sess., p. 366, § 2; Ga. L. 1955, p. 424, § 1; Ga. L. 1973, p. 455, § 1; Code 1981, § 40-2-131; Code 1981, § 40-2-132, as redesignated by Ga. L. 1990, p. 2048, § 2.)

40-2-133. Duty of arresting officers.

It is the duty of every arresting officer, county, municipal, and state, to enforce this chapter. (Ga. L. 1927, p. 226, § 26; Code 1933, § 68-109; Code 1981, § 40-2-132; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-2-133, as redesignated by Ga. L. 1990, p. 2048, § 2.)

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1514 et seq.

40-2-134. Authority of certified law enforcement officers.

Certified law enforcement officers appointed by the commissioner are authorized to enforce the laws of this state relating to the licensing and registration of motor vehicles and are endowed with all the powers of a police officer of this state when engaged in the enforcement of said laws. (Ga. L. 1976, p. 1093, § 1; Code 1981, § 40-2-133; Code 1981, § 40-2-134, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 2000, p. 951, § 3-17.)

Cross references. — Authority of department, counties, and municipalities to regulate parking and unattended vehicles, § 32-6-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 23, 24.

40-2-135. Revocation of license plates.

(a) The commissioner shall revoke any regular, prestige, special, or distinctive license plate which the commissioner determines was issued in error and shall revoke the special and distinctive license plate issued to a member of the General Assembly at such time as the holder ceases to hold such public office. The commissioner or his or her designated agent may revoke any license plate purchased with a check which was returned for any reason. The commissioner shall notify the holder of such regular, prestige, special, or distinctive license plate or of such other license plate of such revocation. The holder of such revoked license plate shall return the license plate to the commissioner or the commissioner's designated agent and register his or her vehicle as otherwise required by this chapter.

(b) The commissioner shall suspend or revoke any permanent registration and license plate issued in accordance with Code Section 40-2-47 when the owner has not complied with the annual requirement

of the payment of ad valorem taxes and is delinquent for more than 12 months from the last date of ad valorem tax payment.

(c) Any state or county law enforcement officer or any special agent or enforcement officer appointed under Code Section 40-2-134 may, upon the direction or request of the commissioner, go upon public or private property to seize a license plate or renewal decal which has been revoked as provided in subsection (a) of this Code section. (Code 1981, § 40-2-134, enacted by Ga. L. 1988, p. 376, § 1; Code 1981, § 40-2-135, as redesignated by Ga. L. 1990, p. 2048, § 2; Ga. L. 1993, p. 972, § 1.5; Ga. L. 2005, p. 334, § 14-9/HB 501.)

40-2-135.1. Suspension of offender's motor vehicle registration for multiple violations of toll provisions.

As provided in subsection (c) of Code Section 32-10-64, the motor vehicle registration of any owner who has failed to pay, within 30 days of the date of notice thereof, the amount determined by the Office of State Administrative Hearings as due and payable for one or more violations of such subsection, shall be immediately suspended by operation of law. (Code 1981, § 40-2-135.1, enacted by Ga. L. 2006, p. 308, § 2/HB 1190.)

Cross references. — State tollway provisions, generally, § 32-10-60 et seq.

40-2-136. Surrender of license plates upon second or subsequent convictions of driving under the influence.

(a) Upon any person's second or subsequent conviction of violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the court shall issue an order requiring that the license plates of all motor vehicles registered in such person's name be surrendered to the court. The court shall notify the commissioner within ten days after issuing any such order, and the commissioner shall revoke each such license plate upon receiving such notice. The court shall issue a receipt for the surrendered license plate or plates. The court shall forward the surrendered license plate or plates to the local tag agent immediately upon receipt. For purposes of this subsection, a plea of nolo contendere shall constitute a conviction.

(b) Except as provided in subsection (c) of this Code section, no new license plate or plates may be issued to a person subject to a court order issued pursuant to subsection (a) of this Code section until such person has been issued a limited driving permit or probationary driver's license in accordance with Code Section 42-8-112 or the driver's license

of such person has been reissued or reinstated, whichever first occurs; and, except as provided in this subsection or subsection (c) of this Code section, it shall be a misdemeanor for such person to obtain a new license plate or plates.

(c)(1) A person who is subject to a court order issued pursuant to subsection (a) of this Code section may apply to the commissioner for authorization to obtain a new license plate or plates bearing a special series of numbers and letters so as to be identifiable by law enforcement officers. Such license plate shall not, in and of itself, constitute probable cause to authorize a traffic stop, search of a motor vehicle, or seizure. The commissioner shall authorize the issuance of such a special license plate only if he or she determines that there is another member of such person's household who possesses a valid driver's license and that a co-owner of the vehicle or a member of the offender's family, other than the offender, is completely dependent upon the motor vehicle for the necessities of life and would be subjected to undue hardship without such special license plate; in no event shall such decision take more than five business days. A local tag agent shall not issue any plates except on written approval of the commissioner, payment of a \$20.00 fee for each vehicle for which a special plate is issued, and compliance by the applicant with all applicable state laws. The written authorization from the commissioner shall specify the maximum number of license plates a person may obtain.

(2) A motor vehicle owned or leased by a person subject to a court order issued pursuant to subsection (a) of this Code section or for which a license plate has been issued subject to paragraph (1) of this subsection may not be sold or conveyed unless the commissioner determines, upon receipt of proper application, that the proposed sale or conveyance is in good faith, that the person subject to such court order will be deprived of custody or control of the motor vehicle, and that the sale or conveyance is not for the purpose of circumventing the provisions of this Code section. Upon making such determination, the commissioner shall transfer the certificate of title to such vehicle and issue a new certificate of registration and license plate.

(3) If the title to a motor vehicle owned by a person subject to a court order issued pursuant to subsection (a) of this Code section or for which a license plate has been issued pursuant to paragraph (1) of this subsection is transferred by the foreclosure, cancellation of a conditional sales contract, sale upon execution, or order of a court of competent jurisdiction, the commissioner shall transfer the certificate of title as provided in Code Section 40-3-34 and issue a new license plate to the new registered owner.

(4) Upon full restoration of the driving privileges of a person subject to a court order under subsection (a) of this Code section, the

commissioner shall authorize the person to apply for a regular issue license plate. The fee for a regular issue license plate shall be as provided by Code Section 40-2-151. As a condition of obtaining any regular issue license plate, the person shall surrender his or her special issue license plate to the local tag agent.

(5) Nothing in this Code section shall be deemed to waive any lawful requirement for the issuance of a license plate including, but not limited to, proof of financial responsibility.

(6) Display of a license plate issued pursuant to paragraph (1) of this subsection shall not constitute probable cause for stopping or detaining a vehicle.

(7) Any person aggrieved by a decision of the commissioner pursuant to paragraph (1) of this subsection may make a request in writing to the Office of State Administrative Hearings for a hearing. Such hearing shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 40-2-136, enacted by Ga. L. 1997, p. 760, § 7; Ga. L. 2000, p. 951, § 3-18; Ga. L. 2001, p. 208, §§ 2-1, 3-1; Ga. L. 2002, p. 1074, § 5.)

Cross references. — Seizure and forfeiture of motor vehicle operated by habitual violator, § 40-6-391.2.

Editor's notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act

shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act."

Administrative rules and regulations. — Affidavit of need for the issuance of a special license plate after multiple convictions for driving under the influence, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Motor Vehicle Division, Rule 375-2-3.03.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders. — Offense covered by O.C.G.A. § 40-2-136(b) is currently designated as an offense requir-

ing fingerprinting. 1997 Op. Att'y Gen. No. 97-330.

40-2-137. Definitions; notice of insurance coverage and termination; electronic transmission of notice; public inspection of minimum liability insurance records; duties of vehicle owner; lapse fee; suspension of vehicle registrations; waiver of lapse fee; persons on active military duty.

(a) As used in this Code section, the term:

(1) "Commercial vehicle policy" means a policy of motor vehicle liability insurance insuring a motor vehicle that is rated or insured as a business use or commercial use vehicle or is licensed by the state as a commercial vehicle.

(2) "Fleet policy" means a commercial vehicle policy that insures two or more vehicles that are not identified individually by vehicle identification number on the policy or a commercial policy that is subject to adjustment by audit for vehicle changes at the end of the policy period.

(3) "Lapse" means one or more days upon which the records of the department do not reflect that a motor vehicle was covered by a policy of minimum motor vehicle insurance coverage.

(4) "Minimum motor vehicle insurance coverage" means minimum coverage as specified in Chapter 34 of Title 33.

(5) "Proof of minimum insurance coverage" means the receipt from an insurer by the department of notice of such insurance coverage by electronic transmission or other means approved by the department.

(6) "Terminate" or "termination" means actual cessation of insurance coverage after the date upon which coverage will not be restored for any reason, including without limitation cancellation, nonrenewal, and nonpayment of premium and without regard to whether such cessation was preceded by any extension or grace period allowed by the insurer.

(b)(1)(A) For purposes of aiding in the enforcement of the requirement of minimum motor vehicle liability insurance, any insurer issuing or renewing in this state any policy of motor vehicle liability insurance required by Chapter 34 of Title 33 other than a fleet policy shall within 30 days after the date the insurance agent binds the coverage or on the date such coverage was renewed, whichever is applicable, provide notice of such insurance coverage by electronic transmission to the department; except that once coverage data has been electronically transmitted to the department, there shall be no requirement to report on subsequent renewals of that coverage. Insurance coverage information in-

cluded in such notice of issue or renewal shall be limited exclusively to name of insurer; vehicle identification number; the make and year of the insured motor vehicle; and policy effective date. The department shall not require the policy limits to be disclosed for purposes of this subparagraph. For the purposes of this Code section, the vehicle identification number shall be the vehicle identification number as that number is shown in the records of the department. For the purposes of this Code section, the Commissioner of Insurance shall furnish such notices to the department upon issuance of a certificate of self-insurance.

(B) In cases in which the minimum motor vehicle insurance coverage required by Chapter 34 of Title 33 terminates, the insurer shall by electronic transmission notify the department of such coverage termination on or before the date coverage ends or, if termination is at the request of the insured, then on the date such request is processed by the insurer. Insurance coverage termination information included in such notice shall include vehicle identification number and the date of coverage termination. For the purposes of this Code section, the Commissioner of Insurance shall furnish such notices to the department upon termination of a certificate of self-insurance.

(C) The commissioner shall notify the Commissioner of Insurance quarterly of any and all violations of the notice requirements of this paragraph by any insurer, and the Commissioner of Insurance may take appropriate action against such insurer the same as is authorized by Code Section 33-2-24 for violations of Title 33; provided, however, that there shall be no private cause of action against an insurer or the department for civil damages for providing information, failing to provide information, or erroneously providing information pursuant to this Code section. No insurer shall utilize the costs of any audit or examination conducted by the Insurance Department pursuant to this paragraph as a cost of business in the insurer's rate base. The department shall commence the reports provided for in this Code section beginning July 1, 2010.

(D) The reports required of insurers and the Commissioner of Insurance shall not apply to any vehicle for which the vehicle coverage is provided by a fleet policy.

(2) The department shall prescribe the form and manner of electronic transmission for the purposes of insurers sending the notices required by this Code section which shall in no way be construed as modifying the provisions of Code Section 33-24-45.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, any irregularities in the notice to the department required by

paragraph (1) of this subsection shall not invalidate an otherwise valid termination.

(4) The minimum liability insurance records which the department is required to maintain under this Code section or any other provision are exempt from the provisions of any law of this state requiring that such records be open for public inspection; provided, however, that the records of any particular motor vehicle may be available for inspection by any law enforcement officer for official law enforcement investigations, the insurer of record, and the owner of the vehicle in the manner prescribed by the commissioner.

(c)(1) The department shall monitor the reporting by insurers of the issuance of new and renewal policies and the termination of coverage.

(2)(A) A match is based upon the vehicle identification number as recorded on the department's motor vehicle records. When the vehicle identification number does not match the department's motor vehicle records, the department shall notify the insurer and the insurer shall, within 30 days from receipt of the returned error, correct the vehicle identification number and resubmit the transaction.

(B) After receipt of the department's notice, if the insurer determines that the vehicle identification number that it submitted to the department is in fact the accurate number on the insured vehicle, then the insurer shall so notify the department and the owner of the vehicle.

(C) Upon notification, the owner shall, in a manner prescribed by the commissioner, make a correction of such number at the appropriate county tag office.

(d)(1)(A) Upon notification of coverage termination by the insurer, the department shall send a notice to the owner of the motor vehicle stating that the department has been informed of the fact that coverage has been terminated and provide an explanation of the penalties provided for by law.

(B) The department shall send such notice to the address of the owner of the motor vehicle shown on the records of the department.

(C) The mailing of such notice by the department shall be deemed notice of such owner's duty to maintain the required minimum insurance coverage and the possible penalties and consequences for failing to do so and shall be deemed to satisfy all notice requirements of law.

(2) It shall be the duty of the owner of such motor vehicle to obtain minimum motor vehicle insurance coverage and it shall be the duty

of the owner's insurer to provide proof of such coverage to the department within 30 days of the date of such notice, pursuant to the requirements of subparagraph (b)(1)(A) of this Code section.

(3) If the vehicle is covered by a fleet policy, the owner's insurer shall not be required to provide such proof electronically to the department.

(e)(1) When proof of minimum motor vehicle insurance coverage is provided within the time period specified in this Code section, but there has been a lapse of coverage for a period of more than ten days, the owner shall remit a \$25.00 lapse fee to the department. Failure to remit the lapse fee to the department within 30 days of the date of such notice will result in the suspension of the owner's motor vehicle registration by operation of law. If any lapse fee provided for in this Code section is paid to the county tax commissioner, the county shall retain \$5.00 thereof as a collection fee.

(2) If proof is not provided within the time period specified in this Code section that minimum motor vehicle insurance coverage is in effect, the owner's motor vehicle registration shall be suspended immediately by operation of law by the department. When such proof is provided and the owner pays a \$25.00 lapse fee and pays a \$60.00 restoration fee, the suspension shall terminate; provided, however, that the commissioner may waive the lapse fee and restoration fee for any owner whose vehicle registration has been suspended pursuant to this paragraph who provides proof of continuous minimum motor vehicle insurance coverage. If any restoration fee provided for in this Code section is paid to the county tax commissioner, the county shall retain \$10.00 thereof as a collection fee.

(3) In the event of a second suspension of the owner's registration under this Code section, within a five-year period of a prior suspension, the department by operation of law shall suspend the motor vehicle registration. When proof is provided that minimum motor vehicle insurance coverage is in effect and the owner pays a \$25.00 lapse fee and pays a \$60.00 restoration fee, the suspension shall terminate.

(4) In the event of a third or subsequent suspension of the owner's registration under this Code section, within the previous five-year period from the date of the third or subsequent suspension, the department by operation of law shall revoke the motor vehicle registration. When proof is provided that minimum motor vehicle insurance coverage is in effect and the owner pays a \$25.00 lapse fee and pays a \$160.00 restoration fee, the owner may apply for registration of the motor vehicle.

(f)(1) The commissioner may waive the lapse fee for any owner whose vehicle registration has been voluntarily canceled pursuant to Code Section 40-2-10.

(2) Upon being presented with a copy of official orders or other satisfactory proof of ordered duty as approved by rule or regulation of the commissioner showing that an owner of a motor vehicle was deployed outside the continental United States on active military duty in the armed forces of the United States at the time his or her minimum motor vehicle insurance coverage for such vehicle terminated, the county tag agent shall waive the lapse fee and restoration fee, suspension of the owner's motor vehicle registration under this Code section shall terminate, and application for registration of the vehicle which otherwise satisfies requirements provided by law may be accepted without delay.

(g) The county tax commissioner shall have the authority to waive a lapse fee if sufficient proof is provided that no actual lapse in coverage occurred. Such proof shall be retained by the county tax commissioner for audit purposes.

(h) Notwithstanding any provision of law to the contrary, a person on active military duty in the armed forces of the United States whose motor vehicle is registered in this state and has license plates from this state and who, as a result of his or her military duties or assignment, is required to reside in another state may meet the requirements for minimum motor vehicle liability coverage by purchasing such coverage in amounts equal to or greater than the minimum coverages required by Georgia law and providing proof of such coverage to the department. In such cases, the motor vehicle shall continue to be registered and licensed in this state as long as it otherwise meets the requirements of law. (Code 1981, § 40-2-137, enacted by Ga. L. 2002, p. 1024, § 3; Ga. L. 2003, p. 261, § 3; Ga. L. 2004, p. 631, § 40; Ga. L. 2004, p. 749, § 1; Ga. L. 2005, p. 334, § 14-10/HB 501; Ga. L. 2006, p. 759, § 1/SB 481; Ga. L. 2010, p. 143, § 5/HB 1005.)

The 2010 amendment, effective May 20, 2010, rewrote this Code section.

Editor's notes. — Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its

becoming law without such approval for the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose."

40-2-138. Suspension or revocation of commercial vehicles when not in compliance with federal regulations.

Any vehicle which is prohibited by any federal agency acting pursuant to federal law, rule, or regulation from being operated in intrastate commerce shall not be eligible for registration under this article, and the commissioner shall suspend or revoke such registration for any vehicle so prohibited from operating. (Code 1981, § 40-2-138, enacted by Ga. L. 2007, p. 652, § 6/HB 518.)

ARTICLE 6A**ADMINISTRATION OF FEDERAL UNIFIED CARRIER
REGISTRATION ACT OF 2005**

Effective date. — This article became effective May 4, 2009.

Administrative rules and regulations. — Commercial vehicles, Official

Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-31.

40-2-140. Department of Public Safety to administer provisions of this article; registration and fee requirements; evidence of continuing education; requirements for obtaining operating authority; collection, retention, and utilization of fees; regulatory compliance inspections; penalties.

(a) As used in this Code section, the term “commissioner” means the commissioner of public safety.

(b) The Department of Public Safety shall be the state agency responsible for the administration of the federal Unified Carrier Registration Act of 2005, which includes participating in the development, implementation, and administration of the Unified Carrier Registration Agreement.

(c) Every foreign or domestic motor carrier, leasing company leasing to a motor carrier, broker, or freight forwarder that engages in interstate commerce in this state shall register with the commissioner or a base state and pay all fees as required by the federal Unified Carrier Registration Act of 2005.

(d)(1) Any motor carrier, leasing company leasing to a motor carrier, broker, or freight forwarder that engages in intrastate commerce and operates a motor vehicle on or over any public highway of this state shall register with the commissioner and pay a fee determined by the commissioner.

(2) No motor carrier shall be issued a registration unless there is filed with the commissioner or the Federal Motor Carrier Safety

Administration or any successor agency a certificate of insurance for such applicant or holder, on forms prescribed by the commissioner, evidencing a policy of indemnity insurance by an insurance company licensed to do business in this state. Such policy shall provide for the protection of passengers in passenger vehicles and the protection of the public against the negligence of such motor carrier, and its servants or agents, when it is determined to be the proximate cause of any injury. The commissioner shall determine and fix the amounts of such indemnity insurance and shall prescribe the provisions and limitations thereof. The insurer shall file such certificate. Failure to file any form required by the commissioner shall not diminish the rights of any person to pursue an action directly against a motor carrier's insurer. The insurer may file its certificate of insurance electronically with the commissioner.

(3) The commissioner shall have the power to permit self-insurance in lieu of a policy of indemnity insurance whenever in his or her opinion the financial ability of the motor carrier so warrants.

(4) Any person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action the motor carrier and its insurance carrier.

(e) Before any motor carrier engaged in exempt passenger intrastate commerce shall operate any motor vehicle on or over any public highway of this state, the motor carrier shall register with the commissioner and pay a fee determined by the commissioner.

(f) Before any motor carrier shall be registered under the federal Unified Carrier Registration Act of 2005 by the Department of Public Safety, that carrier shall furnish evidence to the Department of Public Safety that the carrier, through an authorized representative, has completed, within the preceding 12 months, an educational seminar on motor carrier operations and safety regulations that has been certified by the commissioner.

(g) In addition to any requirements under the federal Unified Carrier Registration Act of 2005, motor carriers required to have operating authority shall fulfill all applicable requirements for obtaining operating authority prior to any operation of a motor vehicle to which such requirements apply.

(h) The commissioner shall collect the fees imposed by this Code section and may establish rules and regulations and prescribe such forms as are necessary to administer this Code section and the federal Unified Carrier Registration Act of 2005. Notwithstanding the provisions of Code Section 40-2-131, the commissioner shall retain and utilize such fees for motor carrier safety programs and enforcement and administration of this article.

(i) The commissioner, and persons he or she designates pursuant to Chapter 2 of Title 35, shall have the authority to perform regulatory compliance inspections under the provisions of Article 5 of Chapter 2 of Title 35 for purposes of determining compliance with laws and regulations, the enforcement and administration of which is the responsibility of the Department of Public Safety.

(j) Every officer, agent, or employee of any corporation and every person who fails to comply with this article or who procures, aids, or abets therein, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for in Chapter 13 of this title. (Code 1981, § 40-2-140, enacted by Ga. L. 2009, p. 629, § 2/HB 57; Ga. L. 2011, p. 479, § 10.2/HB 112; Ga. L. 2013, p. 756, § 2/HB 255.)

The 2013 amendment, effective July 1, 2014, added subsection (a); redesignated former subsection (a) as present subsection (b); and, in subsections (b) and (f), substituted “Department of Public Safety” for “Department of Revenue”; redesignated former subsections (b) through (d.1) as present subsections (c) through (f), respectively; and, in subsection (f), inserted “federal” near the beginning and substituted “Department of Public Safety” for “department” near the middle; redesignated former subsections (e) through (h) as present subsections (g) through (i), re-

spectively; and, in subsection (h), substituted “Code Section 40-2-131” for “Code Sections 40-2-131 and 48-2-17” in the second sentence; and, in subsection (i), deleted “of public safety” following “The commissioner”; and, in the middle of the first sentence of subsection (j), deleted “and any order, rule, or regulation of the Public Service Commission, Department of Public Safety, or Department of Revenue,” following “comply with this article”.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, “of” was inserted near the end of subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 40-2-140 does not, at this time, appear to be an offense for which fingerprinting is

required; thus, this offense is not designated as one for which those charged are to be fingerprinted. 2010 Op. Att’y Gen. No. 2010-2.

ARTICLE 7

MOTOR VEHICLE LICENSE FEES AND CLASSES

JUDICIAL DECISIONS

Purpose. — Ga. L. 1937-38, Ex. Sess., p. 259 (see O.C.G.A. Art. 7, Ch. 2, T. 40) is properly construed as an Act providing for the licensing and registration of motor buses, the fees charged and collected thereunder to be used primarily for the maintenance of the highways, and not as an Act to levy an occupational tax on motor bus corporations using the high-

ways to raise revenue for general purposes. *Georgia Power Co. v. Musgrove*, 77 Ga. App. 880, 50 S.E.2d 118 (1948).

Scope and extent of Ga. L. 1937-38, Ex. Sess., p. 259 (see O.C.G.A. Art. 7, Ch. 2, T. 40) shows a legislative intent to deal comprehensively with the registration and licensing of motor vehicles operated over the highways of this state. Its primary

purpose seems to be the control and regulation of motor vehicles, and not the raising of revenue, although license and registration fees necessarily bring in revenue. *Georgia Power Co. v. Musgrove*, 77 Ga. App. 880, 50 S.E.2d 118 (1948).

Manifest purpose of Ga. L. 1937-38, Ex. Sess., p. 259 (see O.C.G.A. Art. 7, Ch. 2, T. 40) is to require each motor vehicle capable of operating generally over the highways and roadways of this state to be registered and a license obtained for the vehicle's operation. *Georgia Power Co. v. Musgrove*, 77 Ga. App. 880, 50 S.E.2d 118 (1948).

While Ga. L. 1937-38, Ex. Sess., p. 259 (see O.C.G.A. Art. 7, Ch. 2, T. 40) was entitled an amendatory Act, it did not purport to be merely cumulative or auxiliary to the former Act on the same subject, but it was a comprehensive Act covering

the entire subject of the levying of annual license fees for the registration and licensing of the operation of motor vehicles and the Act was evidently intended by the legislature as a complete revision of and substitute for the former Acts insofar as the former Act dealt with fixing the annual license fees for the registration and licensing of the operation of motor vehicles. *Georgia Power Co. v. Musgrove*, 77 Ga. App. 880, 50 S.E.2d 118 (1948).

License fees not a tax against public property. — License fee provided for in Ga. L. 1937-38, Ex. Sess., p. 259 (see O.C.G.A. Art. 7, Ch. 2, T. 40) is nothing more than a license fee, and is not in essence a revenue-raising measure. Therefore, it does not amount to the levying of a tax against public property. *Burkett v. State*, 198 Ga. 747, 32 S.E.2d 797 (1945).

OPINIONS OF THE ATTORNEY GENERAL

Classification of a vehicle depends upon the vehicle's use, rather than the method by which the owner is compen-

sated for use, or the ownership of the vehicle. 1954-56 Op. Att'y Gen. p. 484.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 53, 54, 56.

ALR. — Tax on automobile or on its use for cost of road or street construction, improvement, or maintenance, 24 ALR 937; 68 ALR 200.

Constitutionality of retroactive statute

imposing excise, license, or privilege tax, 146 ALR 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 ALR 263; 174 ALR 1263.

Municipality as subject to state license or excise taxes, 159 ALR 365.

40-2-150. Definitions.

As used in this article, the term:

(.1) "Agricultural field use vehicle" means a commercial truck designed specifically for field applications of fertilizers, poultry litter, and crop protection chemicals which is owned and operated by a farmer or business engaged in the sale and application of fertilizers, poultry litter, and crop protection chemicals and is operated primarily off the highway.

(1) "Farm truck" or "farm trailer" means a truck or trailer for which the owner submits a sworn statement as a part of the registration application to the effect that the vehicle is used primarily

on and is domiciled upon a farm primarily for the carriage of unprocessed products of the farm.

(2) "Farm vehicle" means a vehicle or combination of vehicles owned by a farmer or rancher, which are operated over public highways and used exclusively to transport unprocessed agricultural or livestock products raised, owned, and grown by the owner of the vehicle to market or a place of storage; and shall include the transportation by the farmer or rancher of any equipment, supplies, or products purchased by that farmer or rancher for his own use and used in the farming or ranching operation or used by a farmer or rancher partly in transporting agricultural products or livestock from the farm or ranch of another farmer or rancher that were originally grown or raised on that farm or ranch or when used partly in transporting agricultural supplies, equipment, materials, or livestock to the farm or ranch of another farmer or rancher for use or consumption on that farm or ranch but not transported for hire.

(3) "Motor bus" means any passenger-carrying motor vehicle operated for hire and having a passenger seating capacity of eight or more persons exclusive of the driver.

(4) "Owner declared gross vehicle weight" means the empty weight of the truck or truck-trailer fully equipped and fueled and ready for operation on the road and, in the case of combinations, means the weight when ready for operation on the road of the heaviest trailer or semitrailer with which the power unit will be placed in combination, plus the heaviest load which will be carried within the licensed period.

(5) "Private truck" or "private trailer" means a truck or trailer other than a farm truck, a farm trailer, farm vehicle, or a truck or trailer operated for hire by a common or contract carrier.

(6) "Trailer" means any vehicle operated over the public roads of this state without motive power when the vehicle is designed for carrying persons or property, either partially or wholly, on its own structure and is designed for being drawn by a self-propelled vehicle. (Ga. L. 1937-38, Ex. Sess., p. 259, § 3; Ga. L. 1960, p. 998, § 1; Code 1933, § 91A-5301, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-1; Ga. L. 1990, p. 1883, § 4; Ga. L. 1998, p. 1580, § 3; Ga. L. 2000, p. 951, § 11-2; Code 1981, § 40-2-150, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4; Ga. L. 2005, p. 334, § 14-11/HB 501.)

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil

action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

JUDICIAL DECISIONS

Vehicle is any carriage or conveyance used or capable of being used as a means of transportation on land.

Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Word "vehicle" will not ordinarily include locomotives, cars, and streetcars, which run and are operated over and upon a permanent track or fixed way. *Thompson v. Georgia Power Co.*, 73 Ga. App. 587, 37 S.E.2d 622 (1946).

"Vehicle" does include means of travel or transportation such as automobiles, buses, trucks, or wagons. *Thompson v. Georgia Power Co.*, 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Terms "motor vehicle" and "automobile" are practically synonymous. *Thompson v. Georgia Power Co.*, 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Trackless trolleys not within definition of "motor bus." — Since trackless trolleys do not operate upon rails but the trolley routes are limited to and coextensive with overhead electric wires, which are supported and maintained by poles, supports, guy wires, and other superstructures which extend along and over the streets and highways, do not contain any engine or motor which uses internal combustible fuel, and are used as common carriers of passengers for hire upon the public streets or public highways, trackless trolleys are not motor buses as that

term is defined. *Thompson v. Georgia Power Co.*, 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Neither former Code 1933, § 92-2001 et seq. nor Ga. L. 1937-38, Ex. Sess., p. 259, imposing a registration and licensing fee, specifically refer to trackless trolleys, and since the trolleys did not come within these general definitions and so were not to be classed as "motor buses" as that term was defined, the trolleys were not included within the provisions of either section. *Thompson v. Georgia Power Co.*, 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Trackless trolley was not a motor bus within the meaning of either Ga. L. 1937-38, Ex. Sess., p. 259 or former Code 1933, § 92-2901, since the trolley cannot be said to be a motor vehicle as that term was used in either section. *Thompson v. Georgia Power Co.*, 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Trackless trolleys are not a motor vehicle or automobile. — Since a trackless trolley is propelled by the use of power received from outside sources by means of contact with overhead electric wires, the trolley is not an automobile or a motor vehicle within the generally accepted meaning of those terms. A trackless trolley is not derived from an automobile, nor is it a kind of automobile, but is a distinct and different type of vehicle. *Thompson v. Georgia Power Co.*, 73 Ga. App. 587, 37 S.E.2d 622 (1946).

OPINIONS OF THE ATTORNEY GENERAL

Dump trucks working for a construction company on the highways are liable for license tags. 1948-49 Op. Att'y Gen. p. 688.

Truck used primarily in hauling

eggs may be classified as a farm truck if the truck is used primarily on and is domiciled upon a farm. 1965-66 Op. Att'y Gen. No. 66-54.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 85 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 1 et seq., 188, 307 et seq.

40-2-151. Annual license fees for operation of vehicles; fee for permanent licensing of certain trailers.

(a) The annual fees for the licensing of the operation of vehicles shall be as follows for each vehicle registered:

- | | |
|--|----------|
| (1) For each passenger motor vehicle not operated as a common or contract carrier for hire | \$ 20.00 |
| (2) For each motorcycle | 20.00 |
| (3)(A) For each private commercial motor vehicle in accordance with the owner declared gross vehicle weight rating, as follows: | |
| (i) Less than 18,001 lbs. | 25.00 |
| (ii) 18,001 to 26,000 lbs. | 38.00 |
| (iii) 26,001 to 30,000 lbs. | 45.00 |
| (iv) 30,001 to 36,000 lbs. | 70.00 |
| (v) 36,001 to 44,000 lbs. | 115.00 |
| (vi) 44,001 to 54,999 lbs. | 190.00 |
| (vii) 55,000 to 63,280 lbs. | 300.00 |
| (viii) 63,281 lbs. to maximum permitted | 400.00 |
| (B) Subparagraph (A) of this paragraph notwithstanding: | |
| (i) A straight truck which is not a truck-tractor shall not be classified higher than \$75.00; | |
| (ii) A straight truck hauling fertilizer or agricultural products shall not be classified higher than \$31.00; and | |
| (iii) A truck-tractor hauling fertilizer, milk, or crops as defined in paragraph (7.1) of Code Section 1-3-3 shall not be classified higher than \$220.00; | |
| (4) For each farm truck | 20.00 |
| (5) Except as otherwise specifically provided in this Code section, for each private trailer | 20.00 |
| (6)(A) For each farm trailer including, but not limited to, horse and cattle trailers, the maximum fee shall be \$12.00. | |

(B) There shall be no fee for trailers:

- (i) Used exclusively to haul agricultural products from one place on the farm to another or from one farm or field to another;
- (ii) With no springs which are being employed in hauling unprocessed farm products to their market destination; and
- (iii) With no springs which are pulled from a tongue and used primarily to transport fertilizer to the farm;

(7) For house trailers, auto trailers, and boat trailers, whether pulled by a private automobile or a private truck, and not used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire 12.00

(8) For trailers used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire 12.00

(9) For each motor bus or van-type vehicle used as a common or contract carrier for hire in public transportation transporting passengers, the following:

- (A) Weighing 10,000 pounds or less, \$1.90 per 100 pounds factory weight or fractional part of 100 pounds factory weight;
- (B) Weighing more than 10,000 pounds and not over 15,000 pounds factory weight, \$2.75 for each 100 pounds or fractional part of 100 pounds factory weight;
- (C) Weighing more than 15,000 pounds and not more than 20,000 pounds factory weight, \$3.45 for each 100 pounds or fractional part of 100 pounds factory weight; and
- (D) Weighing more than 20,000 pounds factory weight, \$3.75 for each 100 pounds or fractional part of 100 pounds factory weight. No motor bus license fee shall exceed \$875.00;

- (10)(A) For each commercial motor vehicle operated as a common or contract carrier for hire in accordance with owner declared gross vehicle weight rating, as follows:

(i) Less than 18,001 lbs.	25.00
(ii) 18,001 to 26,000 lbs.	38.00
(iii) 26,001 to 30,000 lbs.	85.00
(iv) 30,001 to 36,000 lbs.	130.00
(v) 36,001 to 44,000 lbs.	215.00
(vi) 44,001 to 54,999 lbs.	365.00
(vii) 55,000 to 63,280 lbs.	575.00
(viii) 63,281 lbs. to maximum permitted	725.00

- (B) Subparagraph (A) of this paragraph notwithstanding, a straight truck which is not a truck-tractor shall not be classified higher than \$150.00;

- (11) For each commercial motor vehicle leased to a common or contract carrier without regard to the duration of the lease and in accordance with the gross vehicle weight rating, the same license fees as required under paragraph (10) of this subsection;

- (12) For each motor driven hearse or ambulance 20.00

- (13) For each school bus operated exclusively in the transportation of pupils and teachers to and from schools or school activities or in the transportation of the owner and the members of his immediate family, the sum of \$20.00. A bus owned by a church or owned in common with other churches and used and operated exclusively for the church in transporting members and patrons to and from church or church activities, when no part of the proceeds of the operation of the bus inures to the benefit of any private person, shall be licensed for the sum of \$20.00 in the same manner as school buses when the bus complies with the laws applicable to school buses;

- (14) For each motor vehicle owned by the state or by a political subdivision or municipality of the state and used exclusively for governmental functions

1.00
- (15) For each motor vehicle used by carriers and operated under special franchise granted by the United States Department of Defense over a route of not more than 20 miles in length which is solely between a point in this state and a point within a United States military reservation in this state

20.00
- (16) Heavy earth-moving machinery, fertilizer application equipment, and crop protection chemical application equipment, not including trucks, which are used primarily off the highway shall not be required to be licensed under this article;
- (17)(A) Trucks transporting logs, pulpwood, or other forest products shall be licensed in accordance with the following annual fees:

(i) Straight trucks and truck-tractors pulling a single pole trailer hauling logs from the woods to the sawmill

38.00

(ii) Other truck-tractors

220.00
- (B) Skidders, tractors, and loaders used only in the woods shall not be required to be licensed. Trucks and truck-tractors specified in subparagraph (A) of this paragraph shall be licensed in accordance with this paragraph even though the trucks or truck-tractors are also used to transport skidders, tractors, loaders, and other logging equipment. Trucks and truck-tractors specified in subparagraph (A) of this paragraph shall not be required to pay additional fees or obtain additional license plates in order to transport logging equipment owned by the owner of the trucks or truck-tractors;
- (18) For each agricultural field use vehicle

31.00
- (b) In lieu of the annual fee provided in paragraphs (6), (7) or (8) of subsection (a) of this Code section, the optional one-time fee for a permanent registration and license plate for:

(1) Any trailer used as or in connection with a motor vehicle, truck, or tractor used as a common or contract carrier for hire, a private carrier, or a motor carrier of property; or

(2) Any boat trailer, utility trailer, or noncommercial cattle and livestock trailer authorized to obtain a permanent registration and license plate under the provisions of Code Section 40-2-47 shall be \$48.00. (Ga. L. 1937-38, Ex. Sess., p. 259, § 4; Ga. L. 1946, p. 77, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 371, § 1; Ga. L. 1955, p. 303, § 1; Ga. L. 1955, Ex. Sess., p. 38, § 1; Ga. L. 1957, p. 376, § 2; Ga. L. 1960, p. 777, § 2; Ga. L. 1960, p. 998, § 2; Ga. L. 1962, p. 450, § 1; Ga. L. 1964, p. 80, §§ 1, 2; Ga. L. 1966, p. 132, §§ 1, 2; Ga. L. 1966, p. 252, §§ 2, 3; Ga. L. 1974, p. 451, §§ 2-4; Ga. L. 1976, p. 694, § 1; Code 1933, § 91A-5302, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 2210, § 1; Ga. L. 1979, p. 5, § 106; Ga. L. 1979, p. 1038, §§ 1-3; Code 1981, § 48-10-2; Ga. L. 1982, p. 3, § 48; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 896, § 1; Ga. L. 1985, p. 1, §§ 1, 2; Ga. L. 1987, p. 348, § 1; Ga. L. 1990, p. 1883, § 5; Ga. L. 1991, p. 434, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 1992, p. 779, § 27; Ga. L. 1994, p. 1373, § 2; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 742, § 3; Ga. L. 1998, p. 1580, §§ 4, 5; Code 1981, § 40-2-151, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4; Ga. L. 2004, p. 1063, § 1; Ga. L. 2007, p. 652, § 7/HB 518; Ga. L. 2008, p. 324, § 40/SB 455; Ga. L. 2008, p. 835, § 4/SB 437; Ga. L. 2009, p. 449, § 3/SB 128.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “motor-driven” was changed to “motor driven” in paragraph (12) (now paragraph (a)(12)).

Pursuant to Code Section 28-9-5, in 2007, “subsection” was substituted for “Code section” at the end of paragraph (a)(11).

The amendment of this Code section by Ga. L. 2008, p. 324, § 40(1)/SB 455, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 835, § 4/SB 437. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor’s notes. — Ga. L. 1994, p. 1373, § 3, not codified by the General Assembly,

provides that the Act shall apply to registration and licensing of trailers on and after January 1, 1995.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act.” This act became effective July 1, 2002.

Ga. L. 2009, p. 449, § 4/SB 128, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to registration and licensing of trailers on and after January 1, 2010.

40-2-152. Fees for apportionable vehicles; restricted license plates for vehicles.

(a) Except as otherwise provided for in this Code section, the annual fee for all apportionable vehicles not operated as a common or contract carrier for hire in accordance with owner declared gross vehicle weight or combined vehicle gross weight shall be as follows:

(1) Less than 30,001 lbs.	\$ 45.00
(2) 30,001 to 36,000 lbs.	70.00
(3) 36,001 to 44,000 lbs.	115.00
(4) 44,001 to 54,999 lbs.	190.00
(5) 55,000 to 63,280 lbs.	300.00
(6) 63,281 lbs. to maximum permitted	400.00

(b) Except as otherwise provided for in this Code section, the annual fee for all apportionable vehicles operated as a common or contract carrier for hire in accordance with owner declared gross vehicle weight or combined vehicle gross weight shall be as follows:

(1) Less than 30,001 lbs.	\$ 85.00
(2) 30,001 to 36,000 lbs.	130.00
(3) 36,001 to 44,000 lbs.	215.00
(4) 44,001 to 54,999 lbs.	365.00
(5) 55,000 to 63,280 lbs.	575.00
(6) 63,281 lbs. to maximum permitted	725.00

(c) For each apportionable motor bus or van-type vehicle, the fee shall be \$3.75 for each 100 pounds or fractional part of 100 pounds factory weight. No motor bus license fee amount shall exceed \$875.00.

(d) Trucks transporting logs, pulpwood, or other forest products shall be issued restricted license plates, and the fees shall be as enumerated in Code Section 40-2-151.

(e) Each school bus operated exclusively in the transportation of pupils and teachers to and from schools or school activities or in the transportation of the owner and his or her immediate family shall be issued a restricted license plate for the sum of \$5.00. A bus owned by a church or owned in common with other churches and used and operated exclusively for the church in transporting members and patrons to and from church or church activities, when no part of the proceeds of the operation of the bus inures to the benefit of any private person, shall be issued a restricted license plate for the sum of \$5.00 in the same manner as school buses when the bus complies with the laws applicable to school buses.

(f) A truck or a truck-tractor hauling fertilizer, milk, or crops as defined in paragraph (7.1) of Code Section 1-3-3 shall be issued a restricted license plate with the fee computed in accordance with Code Section 40-2-151.

(g) A farm vehicle shall be issued a restricted license plate with the fee computed in accordance with Code Section 40-2-151.

(h) Only for apportionable vehicles registered under subsection (a), (b), or (c) of this Code section:

(1) Each such apportionable vehicle shall be subject to an annual alternative ad valorem tax on such apportionable vehicle as authorized under Article VII, Section I, Paragraph (b)(3) of the Constitution. Such alternative ad valorem tax shall be in the amount specified in subsection (k) of this Code section and shall be collected by the commissioner at the same time as the registration fee required under subsection (a), (b), or (c) of this Code section;

(2) Notwithstanding the provisions of Code Section 48-5-442.1, no ad valorem tax shall be assessed against such apportionable vehicle other than the alternative ad valorem tax under this Code section except that such apportionable vehicle shall not be relieved for any such ad valorem tax which accrued and was due and payable prior to registration under the International Registration Plan; and

(3) The full amount of such alternative ad valorem tax proceeds shall not constitute fees for purposes of Code Section 40-2-131. Such proceeds shall be retained by the commissioner in a separate, segregated account for the purpose of allocation and distribution under subsection (m) of this Code section.

(i) For all trailers and semitrailers owned by fleets whose tractors are registered under the International Registration Plan, the apportioned value for ad valorem taxes shall be determined as provided in Code Section 48-5-442.1.

(j) For all trailers and semitrailers owned by fleets whose tractors are registered under the International Registration Plan, payment of ad valorem taxes shall be accepted by the department upon request of the taxpayer regardless of the county in which such trailer is domiciled.

(k) Each apportionable vehicle identified under subsection (a), (b), or (c) of this Code section shall be subject to an alternative ad valorem tax which shall be determined by the value and rate assigned to each weight class. Each weight class shall be a separate subclass of motor vehicle, and the value of each vehicle shall remain the value for each tax year as follows:

(1) Less than 30,001 lbs. shall be valued at \$15,000.00 and taxed at \$50.00 per year;

(2) 30,001 to 36,000 lbs. shall be valued at \$25,000.00 and taxed at \$75.00 per year;

(3) 36,001 to 44,000 lbs. shall be valued at \$40,000.00 and taxed at \$125.00 per year;

(4) 44,001 to 54,999 lbs. shall be valued at \$55,000.00 and taxed at \$175.00 per year;

(5) 55,000 to 63,280 lbs. shall be valued at \$75,000.00 and taxed at \$225.00 per year; and

(6) 63,281 lbs. to maximum permitted shall be valued at \$95,000.00 and taxed at \$275.00 per year.

(l) The commissioner shall add the alternative ad valorem tax in subsection (k) of this Code section to the vehicle registration fees in subsection (a), (b), or (c) of this Code section, prior to apportionment of those fees. The alternative ad valorem tax shall be apportioned on the same basis and in the same manner as the apportionable registration fees and collected at the same time.

(m)(1) The alternative ad valorem tax imposed by this Code section shall be collected by the commissioner and shall be distributed annually from the separate, segregated fund not later than April 1 of the calendar year immediately following the calendar year in which such taxes were paid to the commissioner, in the manner provided for in this subsection.

(2) Each year, the distributions of alternative ad valorem tax proceeds under this subsection shall be based upon the immediately preceding year's tax digest of each participating tax authority submitted to and approved by the commissioner. If such digest has not been submitted and approved, the commissioner shall, for purposes of this subsection, utilize in its place the most recently submitted and approved tax digest of such participating tax jurisdiction.

(3)(A) One percent of the alternative ad valorem tax collected by the commissioner shall be paid into the general fund of the state treasury in order to defray costs of administration.

(B) Except for the amount provided in subparagraph (A) of this paragraph, the remaining proceeds of the alternative ad valorem tax shall be divided among each tax jurisdiction of this state. Such tax jurisdictions shall be limited to only a county, municipality, county school district, and independent school district which levies or causes to be levied for their benefit a property tax on real and tangible personal property.

(C) The distribution shall be made according to the proportion that the amount of ad valorem taxes to be collected by a tax jurisdiction under the tax digest specified under paragraph (2) of this subsection bears to the total amount of ad valorem taxes to be

collected for all purposes applicable to real and tangible personal property in this state for the immediately preceding calendar year. (Code 1981, § 48-10-2.1, enacted by Ga. L. 1990, p. 1883, § 6; Ga. L. 1992, p. 771, § 28; Code 1981, § 40-2-152, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5; Ga. L. 2004, p. 1063, § 2; Ga. L. 2008, p. 835, § 5/SB 437; Ga. L. 2013, p. 32, § 2/HB 463; Ga. L. 2014, p. 866, § 40/SB 340.)

The 2013 amendment, effective April 10, 2013, in subsection (c), substituted “vehicle, the fee shall be” for “vehicle the fee is” in the first sentence, and inserted “amount” in the second sentence; inserted “or her” in the first sentence of subsection (e); and added subsections (h) through (m). See editor’s note for applicability.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

Editor’s notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides that: “This Act shall not abate

any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act.”

Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all registration, annual, or license fees of apportionable vehicles and ad valorem and alternative ad valorem taxes of apportionable vehicles on or after January 1, 2014.

40-2-153. Registration and licensing of makers and dealers of motor vehicles; application; fee; dealer’s number plate; prohibited uses; licensing of persons transporting motor vehicles, mobile homes, or house trailers; exemption of farm tractors.

Reserved. Repealed by Ga. L. 2005, p. 321, § 4/HB 455, effective July 1, 2005.

Editor’s notes. — This Code section was based on Ga. L. 1937-38, Ex. Sess., p. 259, § 4; Ga. L. 1955, Ex. Sess., p. 38, § 2; Ga. L. 1959, p. 232, § 1; Ga. L. 1969, p. 135, § 1; Code 1933, § 91A-5303, enacted

by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-3; Ga. L. 1982, p. 3, § 48; Ga. L. 1992, p. 771, § 29; Ga. L. 1992, p. 2978, § 12; Code 1981, § 40-2-153, as redesignated by Ga. L. 2002, p. 1074, § 1.

40-2-154. License plates for different classes of vehicles; distinguishing markings.

The commissioner may provide a different license plate for each different class of vehicles specified in this article and may distinguish the plate furnished to each class of vehicles by a different letter or lettering or other symbols or markings on the plates. (Ga. L. 1937-38, Ex. Sess., p. 259, § 4; Ga. L. 1955, p. 447, § 1; Code 1933, § 91A-5304, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-4; Code 1981, § 40-2-154, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.)

Cross references. — Design of license plates generally, § 40-2-31.

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, admin-

istrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

40-2-155. Transfers of annual licenses and plates to certain other vehicles; application and fee; payment of additional fee when substituted vehicle required to have higher-priced plate.

The annual license and plate issued for the operation of a vehicle described in paragraph (3), (9), or (10) of subsection (a) of Code Section 40-2-151, except those named in divisions (a)(3)(A)(i), (a)(3)(A)(ii), (a)(3)(A)(iii), (a)(10)(A)(i), (a)(10)(A)(ii), and (a)(10)(A)(iii) of Code Section 40-2-151, may be transferred with the approval of the commissioner from a destroyed or retired motor vehicle to another vehicle upon payment of a transfer fee of \$5.00 and upon presentation of an appropriate application for transfer. If the substituted vehicle normally calls for a higher-priced plate than the vehicle displaced, a proportionate additional fee shall be paid for the remainder of the taxable year. (Ga. L. 1937-38, Ex. Sess., p. 259, § 4; Ga. L. 1977, p. 595, § 1; Code 1933, § 91A-5306, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-6; Ga. L. 1991, p. 94, § 48; Ga. L. 1992, p. 771, § 30; Ga. L. 1995, p. 10, § 48; Code 1981, § 40-2-155, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5.)

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, admin-

istrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act."

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"Retired" as used in Ga. L. 1937-38, Ex. Sess., p. 259 (see O.C.G.A. § 40-2-159) means any motor vehicle which has been withdrawn from operation on the public roads or highways of the state. 1952-53 Op. Att'y Gen. p. 467.

Credit for vehicle retired in this state but put to use in another. — Owner of a bus which is being taken out of service in this state is retiring that vehicle in the sense of Ga. L. 1937-38, Ex. Sess., p. 259 (see O.C.G.A. § 40-2-155). Credit

shall be given for the license plates of vehicles retired from operation in this state, even though the vehicle is to be put to use in another state. 1952-53 Op. Att'y Gen. p. 467.

Transfer of school bus license tag. — When the ownership of a school bus is transferred, the license tag thereon may be transferred provided the transfer is for school purposes. 1952-53 Op. Att'y Gen. p. 468.

40-2-156. Rate of annual license fee for certain vehicles registered during specified parts of year.

Any person registering any of the vehicles named in paragraph (3), (9), or (10) of subsection (a) of Code Section 40-2-151, except those named in divisions (a)(3)(A)(i), (a)(3)(A)(ii), (a)(3)(A)(iii), (a)(10)(A)(i), (a)(10)(A)(ii), and (a)(10)(A)(iii) of Code Section 40-2-151 between the dates of:

(1) March 1 and May 31 of any year shall pay three-fourths of the annual license fee provided in this article;

(2) June 1 and August 31 of any year shall pay one-half of the annual license fee provided in this article; or

(3) September 1 and November 30 of any year shall pay one-fourth of the annual license fee provided in this article. (Ga. L. 1937-38, Ex. Sess., p. 259, § 5; Ga. L. 1960, p. 1031, § 1; Ga. L. 1963, p. 606, § 1; Code 1933, § 91A-5307, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-7; Ga. L. 1986, p. 1053, § 6; Ga. L. 1991, p. 94, § 48; Ga. L. 1995, p. 10, § 48; Ga. L. 1997, p. 419, § 40; Code 1981, § 40-2-156, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4, 5.)

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this

Act." This act became effective July 1, 2002.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 215 (1997).

40-2-157. Payment of fees under International Registration Plan.

Any person initially registering under the International Registration Plan any of the vehicles named in subsection (a), (b), or (c) of Code Section 40-2-152 and whose next registration period ends less than 12 months from the date of application or first date of service of such vehicle shall pay a license fee in an amount equal to one-twelfth of the annual license fee provided by this article multiplied by the number of months remaining until the end of such next registration period. (Code 1981, § 48-10-7.1, enacted by Ga. L. 1999, p. 741, § 3; Ga. L. 2001, p. 1173, § 1-7; Code 1981, § 40-2-157, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, "Code Section 40-2-152" was substituted for "Code Section 48-10-2.1".

Editor's notes. — Ga. L. 2002, p. 1074,

§ 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law com-

mitted prior to the effective date of this Act.” This act became effective July 1, 2002.

40-2-158. Fee assessment to registrants.

For purposes of registration of any vehicle under subparagraph (c)(1)(A) of Code Section 40-2-88 only, registrants shall be assessed fees equivalent to one-twelfth of the annual fee otherwise provided by law multiplied by the number of months remaining until the end of the applicable registration period. (Code 1981, § 48-10-7.2, enacted by Ga. L. 1999, p. 741, § 3; Ga. L. 2001, p. 1173, § 1-8; Code 1981, § 40-2-158, as redesignated by Ga. L. 2002, p. 1074, § 1.)

Editor’s notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act.” This act became effective July 1, 2002.

40-2-159. Time of application and payment for plate.

Each person subject to a license fee as provided in this article shall apply for and obtain the required license plate on or before the expiration of the owner’s registration period each year. Payment for the license plate shall be made to the commissioner, a duly authorized agent, or any other person specified by law. (Ga. L. 1937-38, Ex. Sess., p. 259, § 7; Ga. L. 1943, p. 341, § 1; Ga. L. 1960, p. 1031, § 2; Ga. L. 1963, p. 606, § 2; Code 1933, § 91A-5308, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-8; Ga. L. 1986, p. 1053, § 7; Ga. L. 1995, p. 809, § 20; Code 1981, § 40-2-159, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.)

Cross references. — Further provisions regarding time for registration of and obtaining of licenses for vehicles, § 40-2-20.

Editor’s notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: “Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this act.” The act became effective January 1, 1997.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act.” This act became effective July 1, 2002.

40-2-160. Liability of resident and nonresident motor vehicle operators for payment of taxes and fees; proration on daily basis of fees imposed on motor vehicles hauling seasonal agricultural products grown in state; issuance of special plate.

(a) Each resident and nonresident person shall be liable for and shall pay the taxes and fees required by law for the operation of motor vehicles in this state.

(b) With respect to motor vehicles used solely for the purpose of hauling seasonal agricultural products grown in this state, the fees required by this article may be prorated on a daily basis in accordance with the owner declared gross vehicle weight. The commissioner may issue a special plate or other means of identification to indicate compliance with this subsection. No motor vehicle to which this subsection is applicable shall be operated in violation of this article. (Ga. L. 1937-38, Ex. Sess., p. 259, § 8; Ga. L. 1960, p. 248, § 1; Ga. L. 1964, p. 242, § 1; Code 1933, § 91A-5309, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-9; Code 1981, § 40-2-160, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.)

Cross references. — Registration and licensing requirements for vehicles of non-residents generally, T. 40, C. 2, A. 4.

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any

prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

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Motor vehicle owned by nonresident but used in state is taxable. — When the owner of a motor vehicle driven in this state is not a resident of this state, and the motor vehicle is in this state for

use here and is, in fact, used in much the same manner as other motor vehicles are used in this state, that motor vehicle is taxable in this state. 1968 Op. Att'y Gen. No. 68-39.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 61, 87 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 190 et seq.

40-2-161. Rate of annual license fee for vehicles carrying passengers over route of 50 miles or less.

If a vehicle described in this article is operated as a carrier of passengers, the rate of annual license fee shall be one-half of the amount specified in this article when the vehicle is operated over a route of 50 miles or less. (Ga. L. 1937-38, Ex. Sess., p. 259, § 8B; Ga. L.

1969, p. 981, § 1; Code 1933, § 91A-5310, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-10; Code 1981, § 40-2-161, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.)

Cross references. — Motor carriers generally, T. 46, C. 7.

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 78 et seq.

40-2-162. Apportionment of cost of annual license fees of motor buses to motor common carriers of passengers for hire operating partially outside state; formula; rules.

(a) The commissioner shall apportion the cost of the annual fees for the licensing of motor buses to motor common carriers of passengers for hire operating a fleet of two or more motor buses either interstate, or both interstate and intrastate, under the authority of the Federal Motor Carrier Safety Administration and the Department of Public Safety of this state. The apportionment shall be done so that the total cost of the fees shall bear the same proportion to the annual fees for motor buses as the total number of miles traveled by the fleet of the carrier in this state in both interstate and intrastate operations during the preceding year bears to the total number of miles traveled by the fleet during the year in both interstate and intrastate operations.

(b) The commissioner shall promulgate rules for the apportionment required by this Code section. The rules shall provide that the apportionment apply as nearly as practicable to each class of vehicle operated by the motor common carrier of passengers for hire. (Ga. L. 1957, p. 653, § 1; Code 1933, § 91A-5312, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-12; Code 1981, § 40-2-162, as redesignated by Ga. L. 2002, p. 1074, § 1; Ga. L. 2012, p. 580, § 9/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Federal Motor Carrier Safety Administration and the Department of Public Safety" for "Interstate Commerce Commission or under authority of both the Interstate Commerce Commission and the Public Service Commission" near the end of the first sentence in subsection (a).

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 62 et seq., 85.

C.J.S. — 60 C.J.S., Motor Vehicles, § 309.

ALR. — When granting or refusing certificate of necessity or convenience for operation of motorbuses justified, 67 ALR 957.

40-2-163. Purchase by truck or tractor owner of higher weight license plate; payment of difference between fees.

A vehicle owner may voluntarily increase the allowable gross weight for which his vehicle is licensed by purchasing the appropriate weight license plate for his truck or tractor and paying the difference between the fee charged for the license which is surrendered and the fee charged for the new license, as calculated pursuant to Code Section 40-2-151. (Code 1933, § 92-2918, enacted by Ga. L. 1960, p. 998, § 3; Code 1933, § 91A-5313, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-13; Code 1981, § 40-2-163, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5.)

Cross references. — Regulation of size, weight, etc., of vehicles and loads on public highways, T. 32, C. 6, A. 2. Permits for excess weight and dimensions, § 32-6-28.

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly,

provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 278, 311.

ALR. — Automobiles: liability of owner

or operator of motor vehicle for injury, death, or property damage resulting from defective brakes, 40 ALR3d 9.

40-2-164. Decrease of allowable maximum weight (license class) for trucks and tractors; time; certain trucks not entitled to partial year license.

The allowable maximum weight (license class) for which a truck or tractor is registered may be decreased only once a year, at the beginning of a new license year. Trucks classified in divisions (a)(3)(A)(i), (a)(3)(A)(ii), (a)(3)(A)(iii), (a)(10)(A)(i), (a)(10)(A)(ii), and (a)(10)(A)(iii) of Code Section 40-2-151 shall not be entitled to any partial year license. (Code 1933, § 92-2919, enacted by Ga. L. 1960, p. 998, § 4; Code 1933, § 91A-5314, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-14; Ga. L. 1991, p. 94, § 48; Ga. L. 1995, p. 10, § 48; Code 1981, § 40-2-164, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5.)

Cross references. — Regulation of size, weight, etc., of vehicles and loads on public highways, T. 32, C. 6, A. 2.

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any

prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 281, 310.

40-2-165. Purchase of new license plate by owner of truck weighing more than carried plate permits; credit for surrendered plate.

If upon inspection a truck licensed under Code Section 40-2-151 is found to weigh, together with its loaded trailer, more than is permitted by the license plate which it carries, the owner shall be required to purchase immediately a new license plate for the weight of the truck so inspected. One-half credit shall be given for the surrendered under-rated license plate. (Code 1933, § 92-2920, enacted by Ga. L. 1960, p. 998, § 5; Code 1933, § 91A-5315, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-15; Code 1981, § 40-2-165, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 5.)

Cross references. — Regulation of size, weight, etc., of vehicles and loads on public highways, T. 32, C. 6, A. 2.

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any

prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

40-2-166. Violation of article; penalty.

(a) It shall be unlawful for any person to violate any provision of this article.

(b) Any person who violates any provision of this article shall be guilty of a misdemeanor. (Ga. L. 1937-38, Ex. Sess., p. 259, § 10; Code 1933, § 91A-9927, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-10-16; Code 1981, § 40-2-166, as redesignated by Ga. L. 2002, p. 1074, §§ 1, 4.)

Editor's notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, admin-

istrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This act became effective July 1, 2002.

40-2-167. Definitions; separately stated fees in a rental agreement; recoverable fees and taxes.

(a) As used in this Code section, the term:

(1) "Motor vehicle rental company" means an individual or business entity whose business activity is renting motor vehicles to consumers under rental agreements for periods of 90 days or less or renting "heavy-duty equipment motor vehicles" as such term is defined in Code Section 48-5-505.

(2) "Recoverable facility charges" means governmental and private concession fees, including airport concession fees, consolidated facility charges, and the fees and charges incurred thereon, actually paid by a motor vehicle rental company.

(3) "Recoverable fees and taxes" means costs incurred by a motor vehicle rental company to license, title, register, plate, and inspect rental motor vehicles and ad valorem taxes imposed in connection with the registration of rental motor vehicles or a 1 1/2 percent property tax recovery fee on "heavy-duty equipment motor vehicles" as such term is defined in Code Section 48-5-505.

(4) "Rental agreement" means an agreement under which a rental motor vehicle is rented or leased.

(5) "Rental motor vehicle" means a motor vehicle that is rented or leased without a driver.

(b) Pursuant to a written rental agreement between a motor vehicle rental company and a rental customer, a motor vehicle rental company may include separately stated fees in a rental agreement, which may include, but shall not be limited to, recoverable facility charges and recoverable fees and taxes, as provided in this Code section.

(c) If a motor vehicle rental company includes a charge for recoverable fees and taxes as a separately stated fee in a rental transaction disclosed on the rental agreement, the amount of the charge shall represent the motor vehicle rental company's good faith estimate of the motor vehicle rental company's daily charge as calculated by the motor vehicle rental company to recover its actual total annual recoverable fees and taxes on its rental motor vehicle fleet for the corresponding calendar year.

(d) If the total amount of the recoverable fees and taxes collected by a motor vehicle rental company under this Code section in any calendar year exceeds the motor vehicle rental company's actual recoverable fees and taxes for that calendar year, the motor vehicle rental company shall:

(1) Retain the excess amount; and

(2) Adjust the estimated average per vehicle fee for recoverable fees and taxes for the following calendar year by a corresponding amount.

Nothing herein shall prevent a motor vehicle rental company from making adjustments to the per vehicle recoverable fees and taxes charge during the calendar year to reflect interim developments affecting the motor vehicle rental company's prior estimated per vehicle fee for such calendar year.

(e) The property tax recovery fee may be assessed if the motor vehicle rental company includes the fee as a separately stated fee on its rental agreement.

(f) The recovery fee authorized by this Code section for recoverable fees and taxes shall be subject to state and local sales and use tax in the manner and to the same extent as the fee charged for the lease or rental of the rental motor vehicle. (Code 1981, § 40-2-167, enacted by Ga. L. 2008, p. 622, § 1/SB 181.)

40-2-168. Registration and licensing of taxicabs and limousines.

Owners of a taxicab or limousine, prior to commencing operation in this state, shall, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, and the payment of an annual registration fee of \$25.00, be issued a distinctive license plate by the commissioner. Such distinctive license plate shall be designed by the commissioner and displayed on the vehicle as provided in Code Section 40-2-41. The certificate of registration shall be kept in the vehicle. Revalidation decals shall be issued, upon payment of fees required by law, in the same manner as provided for general issue license plates. Such license plates shall be transferred from one vehicle to another vehicle of the same class and acquired by the same person as provided in Code Section 40-2-42. The transition period shall commence on May 20, 2010, and conclude no later than December 31, 2010, for all existing registrations. For all existing registrations, except during the owner's registration period as provided in Code Section 40-2-21, the commissioner shall exchange and replace any current and valid registration and license plate at no charge to the owner. (Code 1981, § 40-2-168, enacted by Ga. L. 2010, p. 143, § 6/HB 1005.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "shall commence on May 20, 2010, and conclude" was substituted for "shall commence upon

the effective date of this Code section and conclude" in the next-to-last sentence of this Code section.

CHAPTER 3

CERTIFICATES OF TITLE, SECURITY INTERESTS, AND LIENS

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	cles; inspections; fees; exemption of motorcycles; glider kits.
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40-3-43.	Transfer of certificate to person, firm, or corporation paying total loss claim on stolen vehicle; administrative fine enforcement alternative; authority of Commissioner of Insurance.

Article 3

Security Interests in and Liens on Motor Vehicles

40-3-50.	Perfection of security interests generally.
40-3-51.	Creation of security interest by owner.
40-3-52.	Perfection of second or subsequent security interests.

Sec.	
40-3-53.	Perfection and enforcement of liens generally.
40-3-54.	Mechanics' liens; how asserted and foreclosed.
40-3-55.	Assignment of security interests and liens.
40-3-56.	Satisfaction of security interests and liens.
40-3-57.	Disclosure of information as to security interests and liens.
40-3-58.	Exclusiveness of chapter.
40-3-59.	Certain security interests not affected.
40-3-60.	Security interest not created by provision for adjustment of rental price.
40-3-61.	Proceeds of insurance policy to multiple lienholders in event of total loss of vehicle.

Article 4

Offenses

40-3-90.	Certain acts declared felonies.
40-3-91.	Certain acts declared misdemeanors.
40-3-92.	False report of theft or conversion.
40-3-93.	Evidence of criminal intent or knowledge.
40-3-94.	Penalties.
40-3-95.	Effect on other laws.

Cross references. — Applicability of filing requirements of Uniform Commercial Code, § 11-9-310. Liens upon motor vehicles for failure to pay overweight assessment citation, § 32-6-27. Lien against improperly parked motor vehicle for expenses of removal and storage thereof, § 44-1-13.

Code Commission notes. — Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify" laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

Administrative rules and regulations. — Certificate of Title Applications, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Registration and Licensing of Vehicles, Chapter 375-2-12.

Scrapped Vehicles, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-13.

Law reviews. — For article on choice-of-law of contracts in Georgia, see 21 Mercer L. Rev. 389 (1970). For article surveying Georgia cases dealing with commercial law from June 1977 through May 1978, see 30 Mercer L. Rev. 15 (1978). For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979).

For note discussing the "Motor Vehicle Certificate of Title Act" and its impact, see 13 Mercer L. Rev. 258 (1961).

For comment on *Maley v. National Acceptance Co.*, 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Commercial law and motor vehicle provisions construed in pari materia.

— Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.) and the Uniform Commercial Code (see O.C.G.A. T. 11) were adopted at the same session of the General Assembly, relate in part to the same subject matter, and must be construed in *pari materia*. *GMAC v. Whisnant*, 387 F.2d 774 (5th Cir. 1968).

Purpose of chapter. — Manifest purpose of the Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.) is to provide a comprehensive system, with few specific exceptions, for the central recordation of ownership, security interests, and liens in all motor vehicles registered and regularly in use in this state. *First Nat'l Bank & Trust Co. v. Smithloff*, 119 Ga. App. 284, 167 S.E.2d 190 (1969).

Two of the more important purposes of the Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.) are: (1) to prevent traffic in stolen cars by providing an exclusive means of transfer which is recorded in a central location and can be verified quickly and easily; and (2) to provide a means for purchasers of automobiles to ascertain the entire interest of the seller by referring to the face of a single instrument. *Flatau v. Bank of Banks County (In re Stewart)*, 9 Bankr. 32 (Bankr. M.D. Ga. 1980).

Strict construction of chapter. — Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.) must be strictly construed and enforced, especially in those instances where third party interests are involved. *Flatau v. Bank of Banks County (In re Stewart)*, 9 Bankr. 32 (Bankr. M.D. Ga. 1980).

Effect on existing case law on proving chattel ownership. — Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.) provided a simple statutory method of proving the ownership to motor vehicles, but it was not exclusive. It did not change the existing

case law as to the manner in which ownership of chattels, including automobiles, could be proven. *Hightower v. Berlin*, 129 Ga. App. 246, 199 S.E.2d 335 (1973); *Owensboro Nat'l Bank v. Jenkins*, 173 Ga. App. 775, 328 S.E.2d 399 (1985); *GECC v. Catalina Homes, Inc.*, 178 Ga. App. 319, 342 S.E.2d 734 (1986).

Applicability of general rule on personal property. — With respect to automobiles not covered by the Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.), the rule applicable to personal property in general, that possession thereof constituted presumptive evidence of ownership, was applicable to automobiles. *Wreyford v. Peoples Loan & Fin. Corp.*, 111 Ga. App. 221, 141 S.E.2d 216 (1965).

Private transactions. — Even though the provisions of the Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.) may be mandatory in some situations, transactions between the parties themselves are excepted from those provisions. *Goger v. King*, 17 Bankr. 64 (Bankr. N.D. Ga. 1981).

Perfecting of security interest in vehicles. — Only way to perfect a security in motor vehicles was by filing under the Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.). *Staley v. Phelan Fin. Corp.*, 116 Ga. App. 1, 156 S.E.2d 201 (1967); but see *In re Chappell*, 224 Bankr. 507 (Bankr. M.D. Ga. 1998).

When bank financed purchase of car by car-leasing business, the correct avenue for perfecting of the bank's security interest in the car was through the procedure set forth in O.C.G.A. Ch. 3, T. 40 as opposed to filing of the bank's financial statement under procedures established by the U.C.C. *United Carolina Bank v. Capital Auto. Co.*, 163 Ga. App. 796, 294 S.E.2d 661 (1982).

Purpose of perfecting security interest. — Perfection of security interests under the Georgia Motor Vehicle Certifi-

cate of Title Act (see O.C.G.A. § 40-3-1 et seq.) served purpose of giving notice to subsequent creditors. In re Firth, 363 F. Supp. 369 (M.D. Ga. 1973).

Lienholder's burden in identifying parties to be served. — Registration requirements of the Georgia Motor Vehicle Certificate of Title Act (see O.C.G.A. § 40-3-1 et seq.) minimize lienholder's burden in identifying the necessary parties to be served. *Imperial Body Works, Inc. v. Waters*, 156 Ga. App. 887, 275 S.E.2d 822 (1981).

When title passes upon cash sales agreement. — When an agreement is made to sell an automobile for cash, and on delivery of the automobile a check is given for the purchase price as between the vendor and the vendee, and in the absence of an express agreement to the contrary, the title to the automobile does not pass until the check is presented to and paid by the bank in the usual course of business. *Wreyford v. Peoples Loan &*

Fin. Corp., 111 Ga. App. 221, 141 S.E.2d 216 (1965).

Criteria for treating possessor as owner. — Mere possession alone by one who is not shown on the face of the certificate of registration issued by the Revenue Commissioner to be the owner, and in the absence of a properly executed assignment and warranty of title, is not sufficient to authorize another dealing with the possessor to treat that person as the owner thereof. *Wreyford v. Peoples Loan & Fin. Corp.*, 111 Ga. App. 221, 141 S.E.2d 216 (1965).

Cited in *Guardian Disct. Co. v. Settles*, 114 Ga. App. 418, 151 S.E.2d 530 (1966); *Johnson v. Dempsey*, 117 Ga. App. 722, 161 S.E.2d 889 (1968); *Lawrence v. Harding*, 225 Ga. 148, 166 S.E.2d 336 (1969); *Central Chevrolet, Inc. v. Lawhorn*, 120 Ga. App. 650, 171 S.E.2d 774 (1969); *Freeman v. Ryder Truck Lines*, 244 Ga. 80, 259 S.E.2d 36 (1979); *Harris v. Ford Motor Credit Co. (In re Smith)*, 10 Bankr. 883 (M.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Business trust. — Georgia law does not permit a certificate of title to be held

in the name of a business trust. 1997 Op. Att'y Gen. No. 97-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 29 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 96 et seq.

ALR. — Civil rights and liabilities as

affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375.

ARTICLE 1

GENERAL PROVISIONS

Administrative rules and regulations. — Certificate of Title Applications, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Department of Driver Services, Registration and Licensing of Vehicles, Chapter 375-2-12.

40-3-1. Short title.

This chapter shall be known and may be cited as the "Motor Vehicle Certificate of Title Act." (Ga. L. 1961, p. 68, § 1; Ga. L. 1990, p. 2048, § 3.)

JUDICIAL DECISIONS

Proving motor vehicle title. — Ga. L. 1961, p. 68, § 1 provides an additional method whereby title to motor vehicles can be proven but does not change the existing law as to the manner in which ownership of chattels, including automobiles, can be proven. *Rome Bank & Trust Co. v. Bradshaw*, 143 Ga. App. 152, 237 S.E.2d 612 (1977) (see O.C.G.A. § 40-3-1 et seq.).

Purpose of chapter. — Ga. L. 1961, p. 68, § 1 (see O.C.G.A. § 40-3-1 et seq.) is recording statute; the statute's purpose is to perfect and give notice of security interests, and it does not affect the creation of the security interest, which remains a matter of contract between the parties. *Hallman v. State*, 141 Ga. App. 527, 233 S.E.2d 839 (1977).

Failure to comply with chapter. — Failure to comply with Ga. L. 1961, p. 68, § 1 (see O.C.G.A. § 40-3-1 et seq.) does not nullify contract, but merely effects loss of priority when the rights of the third parties who complied with those provi-

sions have intervened. *Hallman v. State*, 141 Ga. App. 527, 233 S.E.2d 839 (1977).

Intervenor's unrecorded security interest in forfeiture proceeding. — State in a forfeiture proceeding does not occupy the status of a creditor or lienholder so that the security interest of the intervenor, when not properly recorded, is subordinated to it. *Hallman v. State*, 141 Ga. App. 527, 233 S.E.2d 839 (1977).

Sale held complete without actual passing of certificate. — While a buyer of a motor home on consignment was entitled to summary judgment after the dealer never paid the consignors, when the consignors refused to execute an assignment and warranty of title when the buyer sought those documents, the buyer was also entitled to damages including reasonable attorney's fees under O.C.G.A. § 40-3-32(a). *Smith v. Hardeman*, 281 Ga. App. 402, 636 S.E.2d 106 (2006).

Cited in *Moon v. Simson*, 236 Ga. 786, 225 S.E.2d 314 (1976); *Motors Acceptance Corp. v. Rozier*, 278 Ga. 52, 597 S.E.2d 367 (2004).

RESEARCH REFERENCES

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 44.

40-3-2. Definitions.

As used in this chapter, the term:

(1) "Boat trailer" means any vehicle without motive power designed for carrying boats, either partially or wholly on its own structure, which is being drawn by a self-propelled vehicle and operated over the public roads of this state.

(2) "Commissioner" means the state revenue commissioner.

(3) "Dealer" means a "dealer" as defined in Code Section 40-1-1 to whom current dealer registration plates have been issued by the commissioner.

(3.1) "Department" means the Department of Revenue.

(4) "Homemade trailer" means a vehicle without motive power, designed for carrying persons or property either partially or wholly

on its own structure and for being drawn by a self-propelled vehicle other than a self-propelled vehicle running exclusively on tracks, which trailer has been manufactured and constructed from component parts for personal use and not for the purpose of commercial resale.

(5) "Identifying number" means the numbers and letters, if any, on a vehicle designated by the commissioner for the purpose of identifying the vehicle.

(6) "Lien" means any lien created by operation of law and not by contract or agreement with respect to a vehicle and includes all liens mentioned in Code Section 44-14-320, other than that in paragraph (5) thereof, and all liens for taxes due the United States of America, constructive notice of which is given by filing notice thereof in the office designated by state law.

(7) "Lienholder" means a person holding a lien created by operation of law on a motor vehicle.

(8) To "mail" means to deposit in the United States mail properly addressed and with postage paid.

(9) "Major component part" means any one of the following subassemblies of a motor vehicle:

(A) Front clip assembly (fenders, hood, and bumper);

(B) Rear clip assembly (quarter panels, floor panel assembly, and roof assembly, excluding a soft top);

(C) Engine and transmission;

(D) Frame; or

(E) Complete side (fenders, door, and quarter panel).

(9.1) "Natural person" means an individual human being and does not include any firm, partnership, association, corporation, or trust.

(10) "Rebuilt motor vehicle" means any motor vehicle which has been damaged and subsequently restored to an operable condition by the replacement of two or more major component parts.

(11) "Salvage motor vehicle" means any motor vehicle:

(A) Which has been damaged to the extent that its restoration to an operable condition would require the replacement of two or more major component parts;

(B) For which an insurance company has paid a total loss claim and the vehicle has not been repaired, regardless of the extent of damage to such vehicle or the number of major component parts

required to repair such vehicle, but shall not mean or include any stolen motor vehicle which has been recovered with the public manufacturer's vehicle identification number plate intact and the vehicle:

(i) Is undamaged;

(ii) Has only cosmetic damage; or

(iii) Has been damaged but only to the extent that its restoration to an operable condition will not require the replacement of two or more major component parts;

(C) Which is an imported motor vehicle which has been damaged in shipment and disclaimed by the manufacturer as a result of the damage, has never been the subject of a retail sale to a consumer, and has never been issued a certificate of title.

The term salvage motor vehicle shall not include any motor vehicle for which a total loss claim has been paid which vehicle has sustained only cosmetic damage from causes other than fire or flood.

(12) "Security agreement" means a written agreement which reserves or creates a security interest.

(13) "Security interest" means an interest in a vehicle reserved or created by agreement which secures the payment or performance of an obligation, such as a conditional sales contract, chattel mortgage, bill of sale to secure debt, deed of trust, and the like. This term includes the interest of a lessor under a lease intended as security.

(14) "Security interest holder" means the holder of an interest in a vehicle reserved or created by agreement and which secures payment or performance of an obligation. (Ga. L. 1961, p. 68, § 2; Ga. L. 1962, p. 79, § 1; Ga. L. 1964, p. 178, § 1; Ga. L. 1980, p. 518, § 1; Ga. L. 1981, p. 644, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 1982, p. 152, §§ 1, 2; Ga. L. 1984, p. 781, §§ 1, 2; Ga. L. 1989, p. 1186, § 6; Ga. L. 1990, p. 1657, § 4; Ga. L. 1990, p. 2048, § 3; Ga. L. 1993, p. 1260, § 4; Ga. L. 2000, p. 951, § 4-1; Ga. L. 2001, p. 1173, § 1-5; Ga. L. 2004, p. 452, § 1; Ga. L. 2005, p. 334, § 15-1/HB 501; Ga. L. 2007, p. 635, § 1/HB 183.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, a comma was deleted following "Code Section 40-1-1" in paragraph (3).

Law reviews. — For note on 1990 amendment of this Code section, see 7 Georgia. St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

"Lien" excludes security interests. § 1, means a lien created by operation of law and not by contract, thus excluding — "Lien," as used in Ga. L. 1964, p. 178,

security interests. *Atlanta Truck Serv., Inc. v. Associates Com. Corp.*, 146 Ga. App. 170, 246 S.E.2d 2 (1978) (see O.C.G.A. § 40-3-2).

Creation of security interest by leasing. — Mere holding of title as a lessor of a leased motor vehicle does not give rise to a security interest therein, unless the interest arose under a lease intended as security. *First Nat'l Bank v. Strother Ford, Inc.*, 188 Ga. App. 749, 374 S.E.2d 203 (1988).

"Security interest holder" not purchaser or vendee. — "Security interest holder" is not a purchaser or vendee of, or a successor in title to, the motor vehicle in question; rather, even though in physical possession of the vehicle's certificate of title, the possessor is only the holder of a legally recognized interest therein. *Wooten v. G.M.H. Auto Sales, Inc.*, 187 Ga. App. 331, 370 S.E.2d 165 (1988).

Effect of foreclosure on mechanic's lien. — Automobile lessor does not, merely by initiating a foreclosure action in regard to a vehicle, thereby acquire any status as a secured party for purposes of obtaining a priority over the holder of a prior validly perfected mechanic's lien. *First Nat'l Bank v. Strother Ford, Inc.*, 188 Ga. App. 749, 374 S.E.2d 203 (1988).

Liability for incomplete compliance with recording and insurance provisions. — When a seller delivered possession of the automobile to the buyer and the transaction was complete as between them, even though compliance had not yet been made with the applicable recording and insurance provisions, the buyer was the "owner" of the automobile, and the buyer alone, and not the seller or the seller's insurer, was liable to a third party for injuries sustained in an accident while the buyer was driving the automo-

bile. *American Mut. Fire Ins. Co. v. Cotton States Mut. Ins. Co.*, 149 Ga. App. 280, 253 S.E.2d 825 (1979).

Potential owners. — Under Ga. L. 1961, p. 68, (see O.C.G.A. Ch. 3, T. 40), the owner of an automobile must necessarily be a natural person, firm, copartnership, association, or corporation. A person doing business in a trade name could be none of these except a natural person. *Samples v. Georgia Mut. Ins. Co.*, 110 Ga. App. 297, 138 S.E.2d 463 (1964).

Bulldozer. — Caterpillar 977L Traxcavator does not fall under definition of "motor vehicle" found either in O.C.G.A. § 10-1-31(a)(4) or general definition of "motor vehicle" under O.C.G.A. § 40-1-1(33) but does fit the definition of "special mobile equipment" under O.C.G.A. § 40-1-1(59). *Battle v. Yancey Bros. Co.*, 157 Ga. App. 277, 277 S.E.2d 280 (1981).

"Rebuilt motor vehicle" construed. — Motor vehicle which was a welded-together composite of parts of two cars was a "rebuilt motor vehicle" rather than a "salvage motor vehicle." *Bill Davidson Buick, Inc. v. Sims*, 187 Ga. App. 81, 369 S.E.2d 285 (1988).

Security agreement not required. — To the extent that a debtor argued that a creditor's security interest had to be in writing, the need for a writing, as contemplated by O.C.G.A. § 40-3-2, was obviated because the debtor admitted on the stand that a vehicle constituted the collateral for the loans the creditor made to the debtor. *Allen v. Santana*, 303 Ga. App. 844, 695 S.E.2d 314 (2010).

Cited in *Wooden v. Michigan Nat'l Bank*, 117 Ga. App. 852, 162 S.E.2d 222 (1968); *Citizens & S. Nat'l Bank v. Georgia Steel, Inc.*, 25 Bankr. 796 (Bankr. M.D. Ga. 1982).

OPINIONS OF THE ATTORNEY GENERAL

No particular form of "security instrument" is prescribed by Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40), and any written agreement that secures the payment or performance of an obligation should suffice as a "security instrument." 1962 Op. Att'y Gen. p. 308.

Caterpillar tractor, hyster, and

bulldozer. — Caterpillar tractor, hyster, and bulldozer used in snaking logs from swamps are "special mobile equipment." 1965-66 Op. Att'y Gen. No. 66-109.

Security interest must be perfected. — Security interest must first be perfected in accordance with the Uniform Commercial Code (see O.C.G.A. T. 11),

and then in accordance with Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40), for "special mobile equipment." 1965-66 Op. Att'y Gen. No. 66-109.

Mobile home considered "vehicle."

— Mobile home is included under the

definition of the term "vehicle" as a mobile home is a device by which a person or property may be transported or drawn upon a highway. 1962 Op. Att'y Gen. p. 303.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 38, 47, 50. 51 Am. Jur. 2d, Liens, §§ 1, 3.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 96 et seq., 193.

U.L.A. — Uniform Motor Vehicle Certif-

icate of Title and Anti-Theft Act (U.L.A.) § 1.

ALR. — Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 ALR3d 739.

40-3-3. Powers and duties of commissioner.

(a) The commissioner is responsible for the administration of this chapter and may employ such clerical assistants and agents as may be necessary from time to time to enable the commissioner speedily, completely, and efficiently to perform the duties conferred on the commissioner in this chapter. The commissioner shall be authorized to delegate any administrative responsibility for retention of applications, certificates of title, notices of security interest, and any other forms or documents relating to the application and registration process to the appropriate authorized tag agent for the county in which the application is made or the registration is issued.

(b) The commissioner shall prescribe and provide suitable forms of applications, certificates of title, notices of security interest, and all other notices and forms necessary to carry out this chapter.

(c) The commissioner may:

(1) Make necessary investigation to procure information required to carry out this chapter;

(2) Adopt and enforce reasonable rules and regulations to carry out this chapter; and

(3) Assign a new identifying number to a vehicle if it has none, or its identifying number is destroyed or obliterated, and shall either issue a new certificate of title showing the new identifying number or make an appropriate endorsement on the original certificate. (Ga. L. 1961, p. 68, § 3; Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, § 5; Ga. L. 1997, p. 739, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "and" was added at the end of paragraph (c)(2).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles,
§§ 29 et seq., 39, 40.

40-3-4. Exclusions.

No certificate of title shall be obtained for:

(1) A vehicle owned by the United States unless it is registered in this state;

(2) A vehicle owned by a manufacturer of or dealer in vehicles and held for sale, even though incidentally used on the highway or used for purpose of testing or demonstration; a vehicle owned by a dealer in vehicles but used by any Georgia public or private school for driver education purposes; or a vehicle used by a manufacturer solely for testing; except that all dealers acquiring new vehicles after July 1, 1962, from a manufacturer for resale shall obtain such evidence of origin of title from the manufacturer as the commissioner shall by rule and regulation prescribe;

(3) A vehicle owned by a nonresident of this state and not required by law to be registered in this state;

(4) A vehicle regularly engaged in the interstate transportation of persons or property for which a currently effective certificate of title has been issued in another state;

(5) A vehicle moved solely by human or animal power;

(6) An implement of husbandry;

(7) Special mobile equipment;

(8) A self-propelled wheelchair or invalid tricycle;

(9) A pole trailer;

(10) Motor buses used for the transportation of persons by a street railroad or other company engaged in the operation of an urban transit system over fixed routes;

(11) A boat trailer;

(12) A homemade trailer;

(13) A device used exclusively upon stationary rails or tracks or which obtains motive power from fixed overhead electric wires;

(14)(A) A vehicle, other than a mobile home or crane, the model year of which is prior to 1986.

(B) The owner of any vehicle which has a valid certificate of title and which becomes subject to the exclusion provided in subpara-

graph (A) of this paragraph may retain the certificate of title. Each subsequent transferee of any vehicle covered by subparagraph (A) of this paragraph, for which the certificate of title has been retained, may obtain a certificate of title by complying with Code Section 40-3-32. However, the failure of any subsequent transferee to comply with Code Section 40-3-32 shall preclude transferees subsequent to that transferee from obtaining a certificate of title. The department shall maintain such records as may be necessary to allow owners to obtain a certificate of title under this subparagraph. No certificate of title authorized to be issued under this subparagraph shall be issued under Code Section 40-3-28.

(C)(i) A security interest in or lien against a vehicle which is subject to the exclusion provided for in subparagraph (A) of this paragraph and which arises after such vehicle becomes subject to the operation of subparagraph (A) of this paragraph may be perfected in the same manner as such security interests and liens are perfected on vehicles required by this chapter to have certificates of title.

(ii) The transferee of any vehicle which is subject to the exclusion provided for in subparagraph (A) of this paragraph, regardless of whether that vehicle has a certificate of title issued pursuant to subparagraph (B) of this paragraph, shall take such vehicle subject to any security interest or lien perfected under this paragraph;

(15)(A) Except as provided in subparagraph (B) of this paragraph, a trailer with an unladen gross weight of 2,000 pounds or less.

(B) The exclusion provided in subparagraph (A) of this paragraph shall not apply to a travel trailer or camper, regardless of its unladen gross weight;

(16) A vehicle which is not sold for the purpose of lawful highway use;

(17) A vehicle with a model year prior to 1963;

(18) A moped; or

(19) A personal transportation vehicle. (Ga. L. 1961, p. 68, § 4; Ga. L. 1962, p. 79, § 2; Ga. L. 1964, p. 178, § 2; Ga. L. 1980, p. 518, § 2; Ga. L. 1981, p. 617, § 1; Ga. L. 1985, p. 1271, § 1; Ga. L. 1987, p. 655, § 2; Ga. L. 1990, p. 2048, § 3; Ga. L. 1993, p. 1260, § 5; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 741, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 1515, § 1; Ga. L. 1998, p. 1179, §§ 31, 32; Ga. L. 1999, p. 334, § 3; Ga. L. 2000, p. 951, § 4-2; Ga. L. 2002, p. 506, § 4; Ga. L. 2002, p. 512, § 8; Ga. L. 2014, p. 745, § 3/HB 877.)

The 2014 amendment, effective July 1, 2014, deleted “or” from the end of paragraph (17); added “; or” at the end of paragraph (18); and added paragraph (19).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, “tracks” was substituted for “trucks” in paragraph (13).

The amendment of this Code section by Ga. L. 2002, p. 506, § 4, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 512, § 8. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

JUDICIAL DECISIONS

Automobile dealers and certificates of title. — Effect of Ga. L. 1961, p. 68, § 4 is that the only way to create security interests in automobiles now is by the method provided in that section, which does not apply to or affect dealers holding automobiles for sale, which automobiles not only need not have a certificate of title, but also pass to buyers in the ordinary course of trade free of the security interest. *Sun Ins. Office, Ltd. v. First Nat'l Bank & Trust Co.*, 113 Ga. App. 782, 149 S.E.2d 753, rev'd on other grounds, 222 Ga. 559, 150 S.E.2d 803 (1966) (see O.C.G.A. § 40-3-4).

1990 camper did not qualify for exclusion. — Current version of O.C.G.A. § 40-3-4(14)(A) provides that no certificate of title is needed for vehicles manufactured prior to 1986. The camper here was a 1990 model and therefore the camper did not qualify under the exclusion; according to the statute as revised, a certificate of title would be required for a 1990 camper. In re *Blair*, No. 05-20151, 2005 Bankr. LEXIS 3547 (Bankr. S.D. Ga. June 2, 2005).

Casual vehicle use. — Term “incidentally,” embraced in the qualification of the exclusion from Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40) expressed in paragraph (2) of Ga. L. 1961, p. 68, § 4 (see O.C.G.A. § 40-3-4) indicates a use which is merely casual and not the prime purpose of the holding for sale. *First Nat'l Bank & Trust Co. v. Smithloff*, 119 Ga. App. 284, 167 S.E.2d 190 (1969).

Holding not subject to leasehold interest. — Notwithstanding that a lease is a sale of a leasehold interest, the phrase “held for sale” should not be construed to mean a holding subject to a lease hold interest, which would contemplate regu-

lar, not incidental, use on the highway. *First Nat'l Bank & Trust Co. v. Smithloff*, 119 Ga. App. 284, 167 S.E.2d 190 (1969).

Vehicles subject to mechanics liens. — Vehicles referred to in Ga. L. 1969, p. 68, § 23 as being subject to mechanics liens which may be asserted by retention of the vehicle are those which are required to have certificates of title. *Peoples, Inc. v. DeVane*, 114 Ga. App. 597, 152 S.E.2d 649 (1966) (see O.C.G.A. § 40-3-54).

Motor cranes propelled by the separate motor on a truck are not special mobile equipment within the meaning of paragraph (7) of Ga. L. 1961, p. 68, § 4 (see O.C.G.A. § 40-3-4). *Citizens & S. Nat'l Bank v. Georgia Steel, Inc.*, 25 Bankr. 796 (Bankr. M.D. Ga. 1982).

When vehicle is 15 model years old. — Evidence in the form of a letter and accompanying tables from the Georgia Department of Revenue indicated a 1978 vehicle became 15 model years old as of September 1, 1991, and a 1979 vehicle became 15 model years old as of September 1, 1992. *Perkins v. Gilbert*, 169 Bankr. 455 (Bankr. M.D. Ga. 1994).

Lapsing of security interest prevented by bankruptcy. — Although secured creditor's security interest was due to expire on date the vehicle became 15 model years old, the filing of the debtor's bankruptcy petition prevented any lapse of the security interest. *Perkins v. Gilbert*, 169 Bankr. 455 (Bankr. M.D. Ga. 1994).

Cited in *First Nat'l Bank & Trust Co. v. McElmurray*, 120 Ga. App. 134, 169 S.E.2d 720 (1969); *Rockwin Corp. v. Kincaid*, 124 Ga. App. 570, 184 S.E.2d 509 (1971); *United Carolina Bank v. Capital Auto. Co.*, 163 Ga. App. 796, 294 S.E.2d 661 (1982); *Furches v. Ring*, 171 Ga. App. 19, 318 S.E.2d 762 (1984); *Owensboro*

Nat'l Bank v. Jenkins, 173 Ga. App. 775,
328 S.E.2d 399 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Obtaining title in foreign state. — Vehicle owner whose vehicle is engaged in interstate transportation may, at the owner's option, elect not to title the vehicle in Georgia, but may rely on the permissive exemptions and title the vehicle in some other state. 1963-65 Op. Att'y Gen. p. 425.

Perfecting special mobile equip-

ment's security interest. — Security interest must first be perfected in accordance with the Uniform Commercial Code (see O.C.G.A. T. 11), and then in accordance with Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40), for special mobile equipment. 1965-66 Op. Att'y Gen. No. 66-109.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 36 et seq., 68, 84 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 29 et seq., 96 et seq.

U.L.A. — Uniform Motor Vehicle Certif-

icate of Title and Anti-Theft Act (U.L.A.) § 2.

ALR. — Construction and application of exemption or exception provisions of statutes requiring registration of motor vehicle, 91 ALR 422.

40-3-5. Stolen, converted, and recovered vehicles.

(a) **Duties of peace officers.** A peace officer who learns of the theft of a vehicle not since recovered shall report the theft to the commissioner. A peace officer who learns of the recovery of a vehicle whose theft or conversion he knows or has reason to believe has been reported to the commissioner shall forthwith report the recovery to the commissioner.

(b) **Owner's, security holder's, or lienholder's report.** An owner or a security interest holder or lienholder shall report the theft of a vehicle, or its conversion if a crime, to the commissioner. A person who has so reported the theft or conversion of a vehicle shall, after learning of its recovery, immediately report the recovery to the commissioner.

(c) **Records to be kept by commissioner; distribution.** The commissioner shall maintain appropriately indexed weekly and cumulative public records of stolen, converted, and recovered vehicles reported to him pursuant to this Code section. The commissioner may make and distribute copies of the weekly records so maintained to peace officers upon request without fee and to others for the fee, if any, the commissioner prescribes.

(d) **Action by commissioner.** The commissioner may suspend the registration of a vehicle whose theft or conversion is reported to him pursuant to this Code section, and until the commissioner learns of its recovery or that the report of its theft or conversion was erroneous he shall not issue a certificate of title for the vehicle. (Ga. L. 1961, p. 68, § 32; Ga. L. 1980, p. 995, § 9; Ga. L. 1990, p. 2048, § 3.)

Cross references. — Penalty for motor vehicle theft, § 16-8-12. Duty of law enforcement officers to report stolen motor vehicles or plates to Georgia Crime Infor-

mation Center, § 35-1-4. Penalty for false report of theft or conversion of motor vehicle, § 40-3-92.

JUDICIAL DECISIONS

Cited in Atlanta Truck Serv., Inc. v. Associates Com. Corp., 146 Ga. App. 170, 246 S.E.2d 2 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 388, 389.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 35.

ALR. — Nature and extent of insured's duty to seek retrieval of stolen automobile, 9 ALR4th 405.

40-3-6. Hearings; judicial review.

(a) A person aggrieved by an act or omission to act of the department under this chapter is entitled, upon request, to a hearing. The commissioner shall establish a board to hear complaints of persons aggrieved by an act or omission to act of the commissioner or any employee of the department pertaining to the administration of this chapter. The procedure established in this chapter for the handling of complaints and grievances shall be exclusive and these procedures shall apply to all such complaints and grievances. The commissioner shall promulgate rules and regulations governing the membership of the board and the organization thereof.

(b) Hearings conducted under subsection (a) of this Code section shall be conducted under the terms and conditions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and court review of such hearings shall be as provided by that chapter. (Ga. L. 1961, p. 68, §§ 29, 30; Ga. L. 1963, p. 32, § 2; Ga. L. 1965, p. 304, § 10; Ga. L. 1984, p. 1194, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 2000, p. 951, § 4-3.)

JUDICIAL DECISIONS

Jurisdiction of federal court. — O.C.G.A. §§ 9-4-1, 9-5-1, 40-2-8, 40-3-6, 40-3-21 and 48-2-59 provide plaintiff challenging automobile "title transfer fee" with "plain, speedy and efficient" pre-tax and post-tax remedies by which a tax-

payer could challenge the constitutional validity of a state tax, and so satisfied the criteria of the Tax Injunction Act, 18 U.S.C. § 1341, so as to bar jurisdiction of the federal court. *Johnsen v. Collins*, 875 F. Supp. 1571 (S.D. Ga. 1994).

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Payment of damages by Department of Revenue. — If the board to hear complaints and claims finds that an act or omission of the commissioner or one of the commissioner's employees in the adminis-

tration of Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40) has caused monetary damage, the Department of Revenue can legally pay the claim. 1965-66 Op. Att'y Gen. No. 66-223.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 96 et seq.

U.L.A. — Uniform Motor Vehicle Certif-

icate of Title and Anti-Theft Act (U.L.A.) §§ 29, 30.

ARTICLE 2

CERTIFICATES OF TITLE

RESEARCH REFERENCES

ALR. — Liability of state, in issuing automobile certificate of title, for failure to discover title defect, 28 ALR4th 184.

40-3-20. Certificate of title required; exemption; certificate a prerequisite to registration; documentation of payment or inapplicability of sales and use tax required to register a vehicle purchased outside the state.

(a) Except as provided in Code Section 40-3-4, every owner of a vehicle which is required by law to be registered in this state and for which no certificate of title has been issued by the commissioner may make application to the commissioner or to the tag agent in the county wherein the owner resides for a certificate of title to the vehicle according to the model of the vehicle. If a vehicle is owned by and used in connection with an established business, application may be made to the commissioner or to the tag agent in the county in which the business is located. Such application shall be made in the following manner: All 1963 model vehicles and all successive model vehicles thereafter shall have a certificate of title. However, once a vehicle comes within the exclusion provided by paragraph (14) of Code Section 40-3-4, a certificate of title shall no longer be required.

(b) The commissioner may by rule or regulation exempt from the requirements of this chapter vehicles owned by nonresident individuals or corporations that are properly titled in the state of such owner's residence where the vehicle is required to be registered in this state because:

(1) Georgia has no reciprocity agreement on registration and licensing of motor vehicles with the owner's state; or

(2) The vehicle is used in both interstate and intrastate transportation.

(c) When the owner of a vehicle is required to have a certificate of title, the tag agent or the commissioner shall not register or renew the registration of such vehicle until a certificate of title has been issued or applied for.

(d) No application for a certificate of title for a vehicle purchased outside the State of Georgia shall be accepted or processed unless the applicant shows, by a valid bill of sale or contract of purchase or by such other documentation satisfactory to the commissioner, that state and local sales and use tax has been paid or is not due. If state and local sales and use tax is owed on such vehicle but has not been paid, the local tag agent shall return the unprocessed application to the applicant informing him or her of the requirements of this Code section. (Ga. L. 1961, p. 68, § 6; Ga. L. 1962, p. 79, § 4; Ga. L. 1963, p. 32, § 1; Ga. L. 1964, p. 436, § 1; Ga. L. 1967, p. 451, § 1; Ga. L. 1981, p. 617, § 2; Ga. L. 1990, p. 2048, § 3; Ga. L. 2005, p. 1132, § 1/HB 364.)

Cross references. — Filing to perfect security interests, generally, § 11-9-310.

Law reviews. — For comment on

Maley v. National Acceptance Co., 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Security interest perfected only by filing under section. — Only way to perfect a security interest in any automobile since the enactment of O.C.G.A. T. 11 is by filing under O.C.G.A. § 40-3-20. Harper v. Avco Fin. Servs., Inc., 124 Ga. App. 6, 183 S.E.2d 89 (1971); but see In re Chappell, 224 Bankr. 507 (Bankr. M.D. Ga. 1998).

Retroactive validity of late-perfected security interest. — Late-perfected security interest is not retroactively valid against an innocent third party who acquired the automobile for value. Harper v. Avco Fin. Servs., Inc., 124 Ga. App. 6, 183 S.E.2d 89 (1971); but see In re Chappell, 224 Bankr. 507 (Bankr. M.D. Ga. 1998).

Use of unregistered trade name. — Use of an unregistered trade name as the owner's name does not defeat a creditor's search for, and the giving of notice to the world of, the existence of the bank's security interest and does not therefore invalidate the bank's security interest. In re Firth, 363 F. Supp. 369 (M.D. Ga. 1973).

Permanently attached mobile home. — "Double-wide" mobile home unit which has become permanently attached to the land on which the mobile home is placed ceases to be a "vehicle" under the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., so that a security interest is obtained by recording a security deed to the land and the "improvements thereon" rather than placing a lien on the mobile home under the vehicle title act. Walker v. Washington, 837 F.2d 455 (11th Cir. 1988).

Because a Chapter 13 debtor's evidence as to the condition of a mobile home established that the wheels, axles, and tow tongue were still attached, that the home was not sited on a permanent foundation, and that the home could be removed without real damage either to the home or to the underlying realty, the home was not a fixture within the meaning of O.C.G.A. § 44-1-6(a), the presumption in O.C.G.A. § 40-3-20 that the mobile home was a vehicle was not rebutted, and a secured creditor's interest therein was not pro-

ected from modification by 11 U.S.C. § 1322(b)(2). *INGOMAR, L.P. v. Collins* (In re Collins), No. 05-42982, 2006 Bankr. LEXIS 4652 (Bankr. S.D. Ga. Sept. 14, 2006).

Debtors' mobile home was no longer personal property but instead was a fixture to the realty based on evidence that the debtors removed the tongue device for hitching the mobile home, had placed a curtain around the base of the home, and had made improvements such as landscaping and a car port attached to the mobile home on the land. Although a mobile home is initially a vehicle and a lien interest must be noted on the title, once a mobile home becomes a fixture a security interest may be perfected under real estate law. *Williamson v. Wash. Mut. Home Loans, Inc.* (In re Williamson), 387 B.R. 914 (Bankr. M.D. Ga. 2008).

Time delay does not exempt vehicle title requirement. — Fact that the time for obtaining a certificate of title is delayed does not make a vehicle referred to as required to have a certificate of title one that is not required to have a certificate of title. *Peoples, Inc. v. DeVane*, 114 Ga. App. 597, 152 S.E.2d 649 (1966).

Cited in *Maley v. National Acceptance Co.*, 250 F. Supp. 841 (N.D. Ga. 1966); *Green v. King Edward Employees' Fed. Credit Union*, 373 F.2d 613 (5th Cir. 1967); *Gwinnett Sales & Serv. v. Trust Co.*, 130 Ga. App. 31, 202 S.E.2d 255 (1973); *Hopkins v. Kemp Motor Sales, Inc.*, 139 Ga. App. 471, 228 S.E.2d 607 (1976); *General Fin. Corp. v. Hester*, 141 Ga. App. 28, 232 S.E.2d 375 (1977); *Citizens & S. Nat'l Bank v. Georgia Steel, Inc.*, 25 Bankr. 796 (Bankr. M.D. Ga. 1982); *May v. Macioce*, 200 Ga. App. 542, 409 S.E.2d 45 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner may title older vehicles. — Commissioner (now the commissioner) may accept the applications for the titling of older model vehicles at any time and may elect to title vehicles as security interests are created with respect thereto. 1963-65 Op. Att'y Gen. p. 244.

Obtaining title in foreign state. — Vehicle owner whose vehicle is engaged in interstate transportation may, at the own-

er's option, elect not to title the vehicle in Georgia, but may rely on the permissive exemptions and title the vehicle in some other state. 1963-65 Op. Att'y Gen. p. 425.

Manufactured homes are subject to the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., and owners thereof are required to obtain a motor vehicle certificate of title. 2000 Op. Att'y Gen. No. 2000-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 29 et seq., 88, 90.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 75 et seq., 96 et seq., 283.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 4.

ALR. — License tax or fee on automobiles as affected by interstate commerce clause, 25 ALR 37; 52 ALR 533; 115 ALR 1105.

Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 58 ALR2d 1351.

40-3-21. Application for first certificate of title.

(a) The application for the first certificate of title of a vehicle in this state shall be made by the owner to the commissioner or the commissioner's duly authorized county tag agent on the prescribed form. Except as provided in subsection (b) of this Code section, the application must be submitted to the commissioner or the appropriate authorized

county tag agent by the owner of the vehicle within 30 days from the date of purchase of the vehicle or from the date the owner is otherwise required by law to register the vehicle in this state. If the owner does not submit the application within that time, the owner of the vehicle shall be required to pay a penalty of \$10.00 in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of rejection to resubmit the documents required by the commissioner or the authorized county tag agent for the issuance of a certificate of title. Should the documents not be properly resubmitted within the 60 day period, there shall be an additional \$10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return same to the commissioner or the authorized county tag agent. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents submitted, if the documents have not been resubmitted as required under this subsection. Such application shall contain:

(1) The full legal name, driver's license number, residence, and mailing address of the owner;

(2) A description of the vehicle, including, so far as the following data exist: its make, model, identifying number, type of body, the number of cylinders, and whether new, used, or a demonstrator and, for a manufactured home, the manufacturer's statement or certificate of origin and the full serial number for all manufactured homes sold in this state on or after July 1, 1994;

(3) The date of purchase by the applicant and, except as provided in paragraph (2) of subsection (c) of this Code section, the name and address of the person from whom the vehicle was acquired and the names and addresses of the holders of all security interests and liens in order of their priority; and

(4) Any further information the commissioner reasonably requires to identify the vehicle and to enable the commissioner or the authorized county tag agent to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the vehicle and liens on the vehicle.

(b)(1) As used in this subsection, the term "digital signature" means a digital or electronic method executed or adopted by a party with the intent to be bound by or to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed the digital or electronic signature is invalidated.

(2) If the application refers to a vehicle purchased from a dealer, it shall contain the name and address of the holder of any security

interest created or reserved at the time of the sale by the dealer. The application shall be signed by the owner and, unless the dealer's signature appears on the certificate of title or manufacturer's statement of origin submitted in support of the title application, the dealer, provided that as an alternative to a handwritten signature, the commissioner may authorize use of a digital signature as long as appropriate security measures are implemented which assure security and verification of the digital signature process, in accordance with regulations promulgated by the commissioner. The dealer shall promptly mail or deliver the application to the commissioner or the county tag agent of the county in which the seller is located, of the county in which the sale takes place, of the county in which the vehicle is delivered, or of the county wherein the vehicle owner resides so as to have the application submitted to the commissioner or such authorized county tag agent within 30 days from the date of the sale of the vehicle. If the application is not submitted within that time, the dealer, or in nondealer sales the transferee, shall be required to pay a penalty of \$10.00 in addition to the ordinary title fee paid by the transferee provided for in this chapter. If the documents submitted in support of the title application are rejected, the dealer submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner or authorized county tag agent for the issuance of a certificate of title. Should the documents not be properly resubmitted within 60 days, there shall be an additional penalty of \$10.00 assessed against the dealer. The willful failure of a dealer to obtain a certificate of title for a purchaser shall be grounds for suspension or revocation of the dealer's state issued license and registration for the sale of motor vehicles.

(c)(1) If the application refers to a vehicle last previously registered in another state or country, the application shall contain or be accompanied by:

(A) Any certificate of title issued by the other state or country; and

(B) Any other information and documents the commissioner or authorized county tag agent reasonably requires to establish the ownership of the vehicle and the existence or nonexistence of security interests in it and liens against it.

(2) If the application refers to a vehicle last previously registered in another state and if the applicant is the last previously registered owner in such state, the application need not contain the name and address of the person from whom the vehicle was acquired. (Ga. L. 1961, p. 68, § 8; Ga. L. 1962, p. 79, § 6; Ga. L. 1964, p. 436, § 2; Ga. L. 1981, p. 883, §§ 1, 2; Code 1981, § 40-3-22; Ga. L. 1982, p. 3, § 40;

Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 1271, § 2; Ga. L. 1986, p. 438, § 1; Code 1981, § 40-3-21, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 741, § 2; Ga. L. 1995, p. 809, § 13; Ga. L. 1997, p. 739, § 5; Ga. L. 2003, p. 500, § 1; Ga. L. 2007, p. 652, § 8/HB 518.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “exist” was substituted for “exists” in paragraph (a)(2).

Editor’s notes. — Ga. L. 1995, p. 809, § 22, not codified by the General Assem-

bly, provides: “Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act.” The act became effective January 1, 1997.

JUDICIAL DECISIONS

Jurisdiction of federal court. — O.C.G.A. §§ 9-4-1, 9-5-1, 40-2-8, 40-3-6, 40-3-21 and 48-2-59 provide plaintiff challenging automobile “title transfer fee” with “plain, speedy and efficient” pre-tax and post-tax remedies by which a taxpayer could challenge the constitutional validity of a state tax, and so satisfied the criteria of the Tax Injunction Act, 18 U.S.C. § 1341, so as to bar jurisdiction of the federal court. *Johnsen v. Collins*, 875 F. Supp. 1571 (S.D. Ga. 1994).

Title passage when certificate not previously issued. — Former O.C.G.A. § 40-3-31 (see O.C.G.A. § 40-3-32) cannot serve to deny passing of right, title, or interest to a purchaser of a vehicle on which a certificate of title has not previously been issued, especially in light of the statutory scheme which contemplates a possible considerable lapse of time between the actual purchase of a new vehicle and the issuance of the certificate of title. *Owensboro Nat’l Bank v. Jenkins*, 173 Ga. App. 775, 328 S.E.2d 399 (1985).

Strict requirements for issuance of certificate of title. — Requirements to

be met for issuance of certificate of title are more stringent than those required to perfect a security interest and therefore an application may have enough information for the applicant to have a security interest perfected and yet not enough information for the applicant to receive a certificate of title. *Harris v. Ford Motor Credit Co.* (In re Smith), 10 Bankr. 883 (M.D. Ga. 1981).

Certificate of title from foreign state. — Certificate of title from another state is not on same level as one from Georgia. *Wielgorecki v. White*, 133 Ga. App. 834, 212 S.E.2d 480 (1975).

Bank’s security interest and unregistered trade name. — Use of an unregistered trade name as the owner’s name does not defeat a creditor’s search for, and the giving of notice to the world of, the existence of the bank’s security interest and does not therefore invalidate the bank’s security interest. *In re Firth*, 363 F. Supp. 369 (M.D. Ga. 1973).

Cited in *Thornton v. Alford*, 112 Ga. App. 321, 145 S.E.2d 106 (1965); *May v. Macioce*, 200 Ga. App. 542, 409 S.E.2d 45 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Establishing ownership through additional documents. — Commissioner has broad discretion as to what additional documents will be required to establish ownership. 1965-66 Op. Att’y Gen. No. 66-200.

Priority of stolen vehicle’s original owner’s property right. — Issuance of title to another cannot deprive stolen vehicle’s original owner of that owner’s property right. 1970 Op. Att’y Gen. No. U70-224.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 75 et seq., 96 et seq.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 6.

ALR. — What constitutes plain, speedy,

and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 ALR Fed. 2d 237.

40-3-21.1. Fee for certificate of title for vehicle titled in another state at time of application.

Repealed by Ga. L. 1996, p. 5, § 1, effective February 9, 1996.

Editor's notes. — This Code section was based on Code 1981, § 40-3-21.1, enacted by Ga. L. 1992, p. 779, § 16; Ga. L. 1993, p. 1260, § 6.

40-3-22. Examination of records.

(a) The commissioner or the commissioner's duly authorized county tag agent, upon receiving application for a first certificate of title, shall check the identifying number of the vehicle shown in the application against the records of vehicles required to be maintained by Code Section 40-3-23 and against the record of stolen and converted vehicles required to be maintained by Code Section 40-3-5.

(b) Subsection (a) of this Code section shall not be applicable to an application for the first certificate of title of a new car or a demonstrator when such application is accompanied by a manufacturer's certificate of origin. (Ga. L. 1961, p. 68, § 9; Code 1981, § 40-3-23; Code 1981, § 40-3-22, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 6.)

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Priority of stolen vehicle's original owner's property right. 1970 Op. Att'y Gen. No. U70-224.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 96 et seq., 273.

U.L.A. — Uniform Motor Vehicle Certif-

icate of Title and Anti-Theft Act (U.L.A.) §§ 7, 8.

40-3-23. Issuance of certificate of title; maintenance of record of certificates issued; public inspection; furnishing records for fee.

(a) The commissioner or the commissioner's duly authorized county tag agent shall file each application received and, when satisfied as to

its genuineness and regularity and that the applicant is entitled to the issuance of a certificate of title, shall issue a certificate of title of the vehicle.

(b) The commissioner or the commissioner's duly authorized county tag agent shall maintain a record of all certificates of title issued:

- (1) Under a distinctive title number assigned to the vehicle;
- (2) Under the identifying number of the vehicle;
- (3) Alphabetically, under the name of the owner;
- (4) Under the vehicle tag registration number; and

(5) In the discretion of the commissioner, in any other method the commissioner determines.

(c) The commissioner or the commissioner's duly authorized county tag agent is authorized and empowered to provide for photographic and photostatic recording of certificate of title records in such manner as the commissioner or the commissioner's duly authorized county tag agent may deem expedient. The photographic or photostatic copies authorized in this subsection shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted.

(d) The motor vehicle records which the commissioner or the commissioner's duly authorized county tag agent is required to maintain under this Code section or any other provision are exempt from the provisions of any law of this state requiring that such records be open for public inspection; provided, however, that, subject to subsection (f) of this Code section, the records may be disclosed for use as provided in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, and by the following:

- (1) Any licensed dealer of new or used motor vehicles;
- (2) Any tax collector, tax receiver, or tax commissioner; and
- (3) A person or entity authorized by the commissioner for use in providing notice to the owners of towed or impounded vehicles.

(e) In addition to any public inspection of records authorized under subsection (d) of this Code section, motor vehicle records consisting of vehicle description, title status, title brands, last recorded mileage, recorded liens, or recorded security interests which the commissioner or the commissioner's duly authorized county tag agent is required to maintain under this Code section shall, in such manner and under such conditions as prescribed by the commissioner, be furnished individually or in bulk to any person upon payment of a reasonable fee, for any

purpose not otherwise prohibited by law, including without limitation for the purpose of providing information to allow for informed motor vehicle purchase and safety decisions. Records furnished in accordance with this subsection may be subsequently transferred to third parties. Personal information of any registrant, including name, address, date of birth, or driver's license or social security number, shall not be furnished or transferred by or to any person pursuant to this subsection.

(f) Except as otherwise required in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, personal information furnished under paragraphs (1), (2), and (3) of subsection (d) of this Code section shall be limited to the natural person's name, address, and driver identification number. The personal information obtained by a business under this Code section shall not be resold or redisclosed for any purposes other than those permitted under the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, without the written consent of the individual. Furnishing of information to a business under this Code section shall be pursuant to a contract entered into by such business and the state which specifies the consideration to be paid by such business to the state for such information and the frequency of updates. (Ga. L. 1961, p. 68, § 10; Ga. L. 1962, p. 79, § 7; Ga. L. 1969, p. 92, § 1; Ga. L. 1981, p. 473, § 1; Code 1981, § 40-3-24; Ga. L. 1982, p. 1784, §§ 1, 2; Code 1981, § 40-3-23, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 7; Ga. L. 2000, p. 951, § 4-4; Ga. L. 2001, p. 1173, § 1-6; Ga. L. 2003, p. 484, § 2; Ga. L. 2004, p. 471, § 9; Ga. L. 2008, p. 803, § 2/HB 945.)

Law reviews. — For article, "Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in

the Sunshine," see 40 Mercer L. Rev. 1 (1988).

JUDICIAL DECISIONS

Certified transcript by commissioner showing vehicle lien. — Under Ga. L. 1962, p. 79, § 7, once a certificate of title is issued, a transcript certified to by the commissioner showing a notice of a lien on a motor vehicle is prima facie evidence of the liens' existence so as to protect the holder as against a subsequent transferee of the vehicle. *Capital Auto. Co. v. Continental Credit Corp.*, 117 Ga. App. 451, 160 S.E.2d 836 (1968) (see O.C.G.A. § 40-3-23).

Admissibility of copy of application in evidence. — Copy of application is admissible in evidence to the same extent as the original application. *Harper v.*

Green, 115 Ga. App. 525, 154 S.E.2d 762 (1967).

Records incorporated into investigatory case file. — Although motor vehicle records used by police during the "Atlanta child murders" case were not open for public inspection under the Public Records Act, O.C.G.A. § 50-18-70 et seq., this did not preclude public disclosure when a law-enforcement officer who had inspected the records incorporated information therefrom into an investigatory case file. *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987).

Disclosure by bank of customer financing. — Disclosure by bank that cus-

tomer was involved with motor vehicles financed through bank was not an invasion of privacy based on public disclosure of private facts as at the time of the disclosure, motor vehicle certificates of title were public records open to public

inspection. *Williams v. Coffee County Bank*, 168 Ga. App. 149, 308 S.E.2d 430 (1983).

Cited in *In re Firth*, 363 F. Supp. 369 (M.D. Ga. 1973).

OPINIONS OF THE ATTORNEY GENERAL

Access to information in Registration and Title Information System. — Department of Revenue is authorized to provide access to the information contained in the Georgia Registration and Title Information System only for the pur-

poses mandated by the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 et seq., or to those state agencies designated in O.C.G.A. §§ 33-34-9, 40-2-130(c), and 40-3-23(d). 2008 Op. Att'y Gen. No. 2008-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 29. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 648, 1207.

C.J.S. — 60 C.J.S., Motor Vehicles, § 96 et seq.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 9.

ALR. — Presumption of ownership of automobile by one in whose name it is registered or whose license plates it bears, 103 ALR 138.

Right to inspect motor vehicle records, 84 ALR2d 1261.

40-3-24. Contents of certificate; certificate as evidence; not subject to garnishment or other process.

(a) Each certificate of title issued by the commissioner or the commissioner's duly authorized county tag agent shall contain:

(1) The date issued;

(2) The name and address of the owner;

(3) The names and addresses of the holders of any security interest and of any lien as shown on the application or, if the application is based on a certificate of title, as shown on the certificate;

(4) The title number assigned to the vehicle;

(5) A description of the vehicle including, so far as the following data exist: its make, model, identifying number, type of body, number of cylinders, whether new, used, or a demonstrator and, if a new vehicle or a demonstrator, the date of the first sale of the vehicle for use; and

(6) Any other data the commissioner prescribes.

(b) The certificate of title shall contain forms for assignment and warranty of title by the owner, and for assignment and warranty of title

by a dealer, and may contain forms for applications for a certificate of title by a transferee or naming of a security interest holder and of a lienholder and the assignment or release of the security interest and lien.

(c) A certificate of title issued by the commissioner or the commissioner's duly authorized county tag agent is prima-facie evidence of the facts appearing on it.

(d) A certificate of title for a vehicle is not subject to garnishment, attachment, execution, or other judicial process, but this subsection does not prevent a lawful levy upon the vehicle. (Ga. L. 1961, p. 68, § 11; Ga. L. 1962, p. 79, § 8; Code 1981, § 40-3-25; Ga. L. 1989, p. 1186, § 7; Code 1981, § 40-3-24, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 8.)

Law reviews. — For comment on *Maley v. National Acceptance Co.*, 250 F.

Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Bank's security interest survives owner's use of unregistered trade name. — Use of an unregistered trade name as the owner's name does not defeat a creditor's search for, and the giving of notice to the world of, the existence of the bank's security interest and does not therefore invalidate the bank's security interest. In re Firth, 363 F. Supp. 369 (M.D. Ga. 1973).

What constitutes evidence of ownership. — Application for a certificate of title and a certificate stating that the title has been issued is not a copy of a certificate of title and, therefore, is not entitled to the effect that a certificate of title would have under subsection (c) of Ga. L. 1962, p. 79, § 8 (see O.C.G.A. § 40-3-24). *Harper v. Green*, 115 Ga. App. 525, 154 S.E.2d 762 (1967).

Georgia certificate of title is not conclusive. By being only prima facie evidence of the question of title it can be contradicted by other evidence. *Wielgorecki v. White*, 133 Ga. App. 834, 212 S.E.2d 480 (1975).

Certificate of title is prima facie evidence of the ownership of an automobile and is sufficient to prove ownership in the absence of evidence clearly contradicting the facts recited in the certificate. *United States v. Elliott*, 571 F.2d 880 (5th Cir.),

cert. denied, 439 U.S. 953, 99 S. Ct. 349, 58 L. Ed. 2d 344 (1978).

"Fact" under subsection (c). — Owner's name stated in the certificate of title is a "fact" within the meaning of subsection (c) of Ga. L. 1962, p. 79, § 8. *Thornton v. Alford*, 112 Ga. App. 321, 145 S.E.2d 106 (1965) (see O.C.G.A. § 40-3-24).

Personal signature of the owner is not a "fact" within the meaning of subsection (c) of Ga. L. 1962, p. 79, § 8 but merely a matter of form in making an application for the certificate. *Thornton v. Alford*, 112 Ga. App. 321, 145 S.E.2d 106 (1965) (see O.C.G.A. § 40-3-24).

Reaching debtor by garnishing title in bank's hands. — Judgment creditor cannot reach the debtor's rights in vehicles, certificates of title to which are held by the bank as security interests for the debtor's loans by attempting to garnish the certificates of title in the bank's hand. *Cobb Bank & Trust Co. v. Springfield*, 145 Ga. App. 753, 245 S.E.2d 42 (1978).

Cited in General Fire & Cas. Co. v. Kuffrey, 115 Ga. App. 121, 153 S.E.2d 590 (1967); *Capital Auto. Co. v. GMAC*, 119 Ga. App. 186, 166 S.E.2d 584 (1968); *Waldrip v. Associates Fin. Servs. Co.*, 126 Ga. App. 560, 191 S.E.2d 302 (1972); *Goger v. King*, 17 Bankr. 64 (Bankr. N.D. Ga. 1981); *Danforth v. Bulman*, 276 Ga. App. 531, 623 S.E.2d 732 (2005).

OPINIONS OF THE ATTORNEY GENERAL

Priority of stolen vehicle's original owner's property right. — Issuance of title to another cannot deprive stolen vehicle's original owner of that owner's property right. 1970 Op. Att'y Gen. No. U70-224.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 30, 31. **C.J.S.** — 60 C.J.S., Motor Vehicles, § 96 et seq.

40-3-25. Entry of odometer reading on certificate of title upon sale or transfer of vehicle.

In addition to the information required by Code Section 40-3-24, each certificate of title issued by the commissioner or the commissioner's duly authorized county tag agent shall contain spaces thereon for the entry of the mileage of the motor vehicle as shown on the odometer of such motor vehicle at the time of its sale or transfer. When a demonstrator or a new motor vehicle is sold by a dealer, it shall be the duty of the dealer to insert on the application for the certificate of title and on the manufacturer's statement of origin where assigned to the first retail purchaser the mileage of such motor vehicle as shown on its odometer on the day of the sale. When the owner of a motor vehicle sells or transfers such motor vehicle, such owner shall enter on the certificate of title the mileage as shown on the odometer of such motor vehicle at the time such owner executes the assignment and warranty of title. When a new certificate of title is issued for a previously titled motor vehicle, the odometer reading as recorded on the old certificate of title shall be shown on the new certificate of title. When a replacement certificate of title is issued to the owner of a lost, stolen, mutilated, or destroyed certificate of title, the mileage as shown on the odometer on the day application is made for the replacement certificate of title shall be shown on the replacement certificate of title. Notwithstanding any other provision of this Code section, the odometer reading of any motor vehicle which is more than ten model years old shall not be required to be recorded on the certificate of title for such vehicle. However, vehicles having a gross vehicle weight rating of more than 16,000 pounds shall be exempt from the requirement of disclosure of the odometer mileage on certificates of title. The commissioner is authorized and directed to provide by regulation for the implementation of this Code section. (Ga. L. 1981, p. 517, § 1; Code 1981, § 40-3-25.1; Ga. L. 1988, p. 1340, § 2; Ga. L. 1989, p. 1186, § 8; Code 1981, § 40-3-25, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 9.)

Cross references. — Penalty for tampering with odometers, § 40-8-5. Regulation of used car dealers generally, T. 43, C. 47.

40-3-25.1. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, former Code Section 40-3-25.1 as present § 3, effective July 1, 1990, redesignated Code Section 40-3-25.

40-3-26. Delivery of certificate; notice to junior security interest holders and lienholders; disposition of certificate when first lien or security interest satisfied.

(a)(1) The certificate of title shall be mailed or delivered to the holder of the first security interest or lien named in it. In the event there is no security interest holder or lienholder named in such certificate, the certificate of title shall be mailed or delivered directly to the owner.

(2) The commissioner may enter into agreements with any such security interest holder or lienholder to provide a means of delivery by secure electronic measures of a notice of the recording of such security interest or lien. On or after January 1, 2013, the commissioner shall require that security interest holders and lienholders receive notice of recordings of security interests and liens electronically. Such requirement may be phased in based on criteria designated by the commissioner through duly adopted rules and regulations. Such security interest or lien shall remain on the official records of the department until such time as the security interest or lien is released by secure electronic measures or affidavit of lien or security interest release; after which release, or at the request of the lienholder or security interest holder, the certificate of title may be printed and mailed or delivered to the next lienholder or security interest holder or as otherwise provided by paragraph (1) of this subsection without payment of any fee provided by Code Section 40-3-38.

(3) If the certificate of title has not been electronically delivered as provided for in paragraph (2) of this subsection, in lieu of delivering a certificate of title, the commissioner may deliver to any security interest holder or lienholder a confirmation form stating the certificate of title is available for printing:

(A) When such confirmation is presented to the commissioner's duly authorized county tag agent or to the commissioner requesting delivery of the title in accordance with this Code section;

(B) When the security interest or lien is satisfied and the confirmation form is delivered to the owner stating the security interest or lien is satisfied and released. The owner may then present the confirmation letter to the commissioner's duly authorized county tag agent or the commissioner for printing in accordance with this Code section; or

(C) When the security interest holder or lienholder delivers the confirmation form to the commissioner's duly authorized county tag agent or the commissioner stating the security interest or lien is satisfied and released and provides an alternate delivery address to include any subsequent security interest holder, lienholder, vehicle dealer, or other business with an interest in such vehicle.

(4) In the event the confirmation form is lost or stolen, the security interest holder or lienholder shall file an affidavit stating the circumstances under which the confirmation form was lost or stolen. Upon receipt, the commissioner shall deliver a certificate of title in accordance with this Code section.

(b) If the certificate of title is mailed to a security interest holder or lienholder, such person shall notify by mail all other lien or security interest holders that such person has received the certificate of title. The notice shall inform the security interest holder or lienholder of the contents and information reflected on such certificate of title. Such mailing or delivery shall be within five days, exclusive of holidays, after the receipt of the certificate by the holder of any security interest or lien.

(c) The security interest holder or lienholder may retain custody of the certificate of title until such security interest holder's or lienholder's claim has been satisfied. The security interest holder or lienholder having custody of a certificate of title must deliver the certificate of title to the next lienholder or security interest holder within ten days after such custodial security interest holder's or lienholder's lien or security interest has been satisfied and, if there is no other security interest holder or lienholder, such custodial security interest holder or lienholder must deliver the certificate of title to the owner.

(d) If a lien or security interest has been electronically recorded, the release of such lien or security interest will require the lienholder to notify the commissioner and the owner of the vehicle, on a form prescribed by the commissioner, or by electronic means approved by the commissioner, of the release of the lien or security interest. Such notice will inform the owner that such owner may request a title free of lien, upon verification of such owner's current mailing address, from the commissioner as provided in Code Section 40-3-56. (Ga. L. 1961, p. 68, § 12; Ga. L. 1962, p. 79, § 9; Ga. L. 1964, p. 436, § 3; Ga. L. 1965, p. 304, § 1; Ga. L. 1974, p. 594, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 10; Ga. L. 2000, p. 951, § 4-5; Ga. L. 2010, p. 143, § 7/HB 1005; Ga. L. 2012, p. 580, § 2/HB 865.)

The 2012 amendment, effective July 1, 2012, added the second and third sentences in paragraph (a)(2).

Law reviews. — For comment on

Maley v. National Acceptance Co., 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Effective notice of condemnation proceeding. — When the owner or lessee of a vehicle conveying or storing contraband is a nonresident, service by publication is effective notice of the condemnation proceeding, and whether the owner or lessee's security interest could be perfected is irrelevant. *Taylor v. State Bank*, 119 Ga. App. 50, 165 S.E.2d 920 (1969).

Cited in *Gwinnett Sales & Serv. v. Trust Co.*, 130 Ga. App. 31, 202 S.E.2d 255 (1973); *In re Firth*, 363 F. Supp. 369 (M.D. Ga. 1973); *First Union Nat'l Bank v. GMAC*, 191 Ga. App. 323, 381 S.E.2d 573 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31, 40, 45, 161 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 96 et seq., 103 et seq.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 10.

ALR. — Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 ALR2d 813.

40-3-27. General procedure for reflecting a subsequent transaction on certificate.

(a) Whenever the certificate of title is in the possession of a security interest holder or lienholder as allowed by this chapter and some other person, including the owner, who has an interest in a transaction concerning a security interest or lien shown on the certificate of title desires to have that transaction reflected on the certificate of title, such security interest holder or lienholder may execute a notice of that transaction in the form prescribed by the commissioner, setting forth the details of the transaction such security interest holder or lienholder desires to be reflected on the certificate of title. The notice, a fee as provided by Code Section 40-3-38, and the title application shall be mailed by certified mail or statutory overnight delivery, return receipt requested, by the person desiring the change to the first security interest holder or lienholder having possession of the certificate of title. The notice shall contain on its face instructions to the security interest holder or lienholder having custody of the certificate of title directing such security interest holder or lienholder within ten days to forward the notice, the fee, the title application, and the certificate of title to the commissioner or the commissioner's duly authorized county tag agent. The first security interest holder or lienholder having possession of the certificate of title shall comply with the instructions contained in the notice. The commissioner or the authorized county tag agent, upon receipt of such a notice and title application, together with the fee and certificate of title, shall enter the transaction shown on the notice on such commissioner's or authorized county tag agent's records and on

the certificate of title or issue a new certificate of title and shall then deliver the certificate of title as provided for in this chapter. The person desiring the change shall retain the return certified mail or statutory overnight delivery receipt as proof of such person's compliance with this Code section.

(b) In the event the first security interest holder or lienholder holding the certificate of title fails, refuses, or neglects to forward the title application, notice, fee, and original certificate of title to the commissioner or the commissioner's duly authorized county tag agent, as required by this Code section, the person desiring the change may, on a form prescribed by the commissioner, make direct application to the commissioner or the authorized county tag agent. Such direct application to the commissioner or the authorized county tag agent shall have attached to it the return registered or certified mail or statutory overnight delivery receipt showing the previous mailing of the title application, fee, and notice to the first security interest holder or lienholder. Upon receipt of such a direct application, the commissioner or the authorized county tag agent shall order the first security interest holder or lienholder having custody of the certificate of title to forward the certificate of title to the commissioner or the authorized county tag agent for the purpose of having the subsequent transaction entered thereon or a new certificate of title issued. If, after a direct application to the commissioner or the authorized county tag agent and the order of the commissioner or authorized county tag agent, the first security interest holder or lienholder continues to fail, refuse, or neglect to forward the certificate of title as provided in this Code section, the commissioner or authorized county tag agent may cancel the outstanding certificate of title and issue a new certificate of title reflecting all security interests and liens, including the subsequent security interest, and this new certificate of title shall be delivered as provided for in this chapter.

(c) As an alternative to mailing notices of transactions concerning a security interest or lien on the certificate of title to the commissioner or the commissioner's appropriate authorized county tag agent in accordance with this Code section, the commissioner shall be authorized to permit the transaction to be made by electronic means in accordance with regulations promulgated by the commissioner.

(d) Any first security interest holder or lienholder having possession of a certificate of title shall not have the validity of such first security interest holder's or lienholder's security interest or lien affected by surrendering the certificate of title as provided by this Code section. (Ga. L. 1965, p. 304, § 2; Ga. L. 1981, p. 883, § 4; Ga. L. 1986, p. 438, § 2; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 11; Ga. L. 1998, p. 1179, § 33; Ga. L. 2000, p. 1589, § 3.)

JUDICIAL DECISIONS

Cited in *In re Firth*, 363 F. Supp. 369 (M.D. Ga. 1973); *Fryer v. Easy Money Title Pawn, Inc.*, 183 Bankr. 322 (Bankr. S.D. Ga. 1995); *Fryer v. Easy Money Title Pawn, Inc.*, 183 Bankr. 654 (Bankr. S.D. Ga. 1995).

40-3-28. Registration of vehicle where commissioner not satisfied as to ownership of vehicle; bond.

If the commissioner or the commissioner's duly authorized county tag agent is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the commissioner or authorized county tag agent may register the vehicle, but shall either: (1) withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the commissioner or authorized county tag agent as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or (2) as a condition of issuing a certificate of title, require the applicant to file with the commissioner or authorized county tag agent a bond in the form prescribed by the commissioner and executed by the applicant and by a bonding, surety, or insurance company licensed to do business in Georgia. The bond shall be in an amount equal to the value of the vehicle as determined by the commissioner or authorized county tag agent and payable to the commissioner for the benefit of any prior owner, lienholder, or security interest holder, and any subsequent purchaser of the vehicle or person acquiring any security interest or lien on it, and their respective successors in interest, against any expense, loss, or damage, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the vehicle. The commissioner shall have a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall expire at the end of four years unless the commissioner or authorized county tag agent has been notified of a breach of a condition of the bond. (Ga. L. 1967, p. 450, § 1; Ga. L. 1973, p. 712, § 1; Ga. L. 1976, p. 319, § 1; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 12; Ga. L. 2002, p. 838, § 3.)

JUDICIAL DECISIONS

Effect on UCC warranties. — Issuance of certificates of title pursuant to O.C.G.A. § 40-3-28 does not, as a matter of law, negate the existence of express or implied warranties of title which the seller gives the purchaser in the course of their dealings. *Hudson v. Gaines*, 199 Ga. App. 70, 403 S.E.2d 852 (1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31, 40, 45, 161 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 96 et seq., 273, 274, 276.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 11.

40-3-29. Refusing certificate.

(a) The commissioner or the commissioner's duly authorized county tag agent shall refuse issuance of a certificate of title only if any required fee is not paid or if the commissioner or the commissioner's duly authorized county tag agent has reasonable grounds to believe that:

- (1) The applicant is not the owner of the vehicle;
- (2) The application contains a false or fraudulent statement;
- (3) The applicant fails to furnish required information or documents or any additional information the commissioner or authorized county tag agent reasonably requires; or
- (4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

(b) If the application for first certificate of title is rejected, the application shall be returned to the holder of the first security interest or lien named in the application or to the owner if there is no security interest holder or lienholder. (Ga. L. 1961, p. 68, § 13; Ga. L. 1982, p. 403, §§ 1, 3; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 13.)

JUDICIAL DECISIONS

Stringent requirements. — Requirements to be met for issuance of certificate of title are more stringent than those required to perfect a security interest and therefore an application may have enough information for the applicant to have a

security interest perfected and yet not enough information for the applicant to receive a certificate of title. *Harris v. Ford Motor Credit Co.* (In re Smith), 10 Bankr. 883 (M.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Refusing title to nonresidents. — If the owner of a bus used in an interstate business, but required to be registered in Georgia, is a resident of a foreign state and elects to title the owner's vehicle in Georgia, the commissioner may refuse to title such a vehicle only on the grounds specified by Ga. L. 1961, p. 68, § 13 (see

O.C.G.A. § 40-3-29). 1963-65 Op. Att'y Gen. p. 425.

Priority of stolen vehicle's original owner's property right. — Issuance of title to another cannot deprive stolen vehicle's original owner of that person's property right. 1970 Op. Att'y Gen. No. U70-224.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 96 et seq., 273, 274, 276.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 12.

40-3-29.1. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 3, effective July 1, 1990, redesignated

former Code Section 40-3-29.1 as present Code Section 40-3-30.

40-3-30. Requirement of compliance with federal safety standards.

(a) In addition to the reasons set forth in Code Section 40-3-29, no application shall be accepted and no certificate of title shall be issued to any motor vehicle which was not manufactured to comply with applicable federal motor vehicle safety standards issued pursuant to 49 U.S.C.A. Section 30101, et seq., unless and until the United States Customs Service or the United States Department of Transportation has certified that the motor vehicle complies with such applicable federal standards and unless all documents required by the commissioner for processing an application for a certificate of registration or title are printed and filled out in the English language or are accompanied by an English translation.

(b) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of title for such motor vehicles first titled in Georgia that have a manufactured date that is 25 years or older at the time of application. Certification of compliance shall only be required at the time of application for the issuance of the initial Georgia certificate of title.

(c) The provisions of subsection (a) of this Code section shall not apply to applications for certificates of title for former military motor vehicles that are less than 25 years old and manufactured for the United States military. (Code 1981, § 40-3-29.1, enacted by Ga. L. 1985, p. 693, § 2; Ga. L. 1990, p. 8, § 40; Code 1981, § 40-3-30, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 4-6; Ga. L. 2002, p. 512, § 9; Ga. L. 2002, p. 1378, § 3; Ga. L. 2014, p. 409, § 3/SB 392.)

The 2014 amendment, effective July 1, 2014, in the first sentence of subsection (b), substituted "shall not" for "shall only" and substituted "that have a manufac-

tured date that is 25 years or older at the time of application" for "after July 1, 1985"; and added subsection (c).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former O.C.G.A. § 40-3-29.1 are included in the annotations for this Code section.

Former O.C.G.A. § 40-3-29.1 violated the preemption clause of the federal Clean Air Act, 42 U.S.C. § 7543 (a), but did not preempt 15 U.S.C. § 1392

(d) of the National Traffic and Motor Vehicle Safety Act, did not violate the Commerce Clause, and was not unconstitutionally vague. *Georgia Auto. Importers Compliance Ass'n v. Bowers*, 639 F. Supp. 352 (N.D. Ga. 1986) (decided under former O.C.G.A. § 40-3-29.1).

40-3-30.1. Definitions; inspections.

(a) As used in this Code section and in Code Section 40-2-27, the term:

(1) "Assembled motor vehicle or motorcycle" or "kit motor vehicle or motorcycle" means any motor vehicle or motorcycle that is:

(A) Manufactured from a manufacturer's kit or manufacturer's fabricated parts, including replicas and original designs:

(i) By an owner;

(ii) At the request of the owner by a third-party manufacturer of motor vehicles or motorcycles; and

(iii) Such manufacturer is not manufacturing and testing in accordance with federal safety standards issued pursuant to 49 U.S.C.A. Section 30101, et seq., unless and until the United States Customs Service or the United States Department of Transportation has certified that the motor vehicle complies with such applicable federal standards;

(B) A new vehicle and consists of a prefabricated body, chassis, and drive train;

(C) Handmade and not mass produced by any manufacturer for retail sale; or

(D) Not otherwise excluded from emission requirements and is in compliance with Chapter 8 of Title 40, relating to equipment and inspection of motor vehicles.

(2)(A) "Unconventional motor vehicle or motorcycle" means any motor vehicle or motorcycle that is manufactured, including, but not limited to, all-terrain vehicles, off-road vehicles, motor driven cycles, mopeds, and personal transportation vehicles, and that is not in compliance with the following:

(i) Chapter 8 of Title 40, relating to equipment and inspection of motor vehicles;

(ii) Applicable federal motor vehicle safety standards issued pursuant to 49 U.S.C.A. Section 30101, et seq., unless and until the United States Customs and Border Protection Agency or the United States Department of Transportation has certified that the motor vehicle complies with such applicable federal standards; or

(iii) Applicable federal emission standards issued pursuant to 42 U.S.C.A. Section 7401 through Section 7642, the "Clean Air Act," as amended.

(B) Such term shall not include former military motor vehicles.

(b) In addition to the requirements contained in Code Section 40-3-30, prior to the issuance of a certificate of title to the owner of an assembled motor vehicle or motorcycle, the owner shall cause such assembled motor vehicle or motorcycle to be inspected in order to establish:

(1) The existence of a verifiable Manufacturer's Certificate of Origin (MCO) or other verifiable documentation of purchase of all major components; and

(2) That such assembled motor vehicle or motorcycle complies with:

(A) Chapter 8 of Title 40, relating to equipment and inspection of motor vehicles; and

(B) If applicable, federal emission standards issued pursuant to 42 U.S.C.A. Section 7401 through Section 7642, the "Clean Air Act," as amended.

(c) The inspection conducted under subsection (b) of this Code section shall only be for the purpose of establishing that such assembled motor vehicle or motorcycle is eligible to receive a certificate of title.

(d) The department shall be authorized to charge an inspection fee.

(e) Unconventional motor vehicles or motorcycles shall not be titled or registered. (Code 1981, § 40-3-30.1, enacted by Ga. L. 2008, p. 835, § 6/SB 437; Ga. L. 2014, p. 405, § 4/SB 392; Ga. L. 2014, p. 745, § 4/HB 877.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, designated paragraph (a)(2) as subparagraph (a)(2)(A) and redesignated former subparagraphs (a)(2)(A) through (a)(2)(C) as present divisions (a)(2)(A)(i) through (a)(2)(A)(iii), respectively; and added subparagraph (a)(2)(B). The second 2014 amendment, effective July 1, 2014, in

paragraph (a)(2) (now subparagraph (a)(2)(A)), deleted "motorized carts," following "off-road vehicles," and substituted "mopeds, and personal transportation vehicles," for "and mopeds,," and, in subparagraph (a)(2)(B) (now division (a)(2)(A)(ii)), substituted "United States Customs and Border Protection Agency" for "United States Customs Service".

40-3-31. Lost, stolen, mutilated, or destroyed certificates.

If a certificate of title is lost, stolen, mutilated, or destroyed or becomes illegible, the owner or the legal representative of the owner named in the certificate, as shown by the records of the commissioner or the commissioner's duly authorized county tag agent, shall promptly make application for and may obtain a replacement, upon furnishing information satisfactory to the commissioner or authorized county tag agent. The replacement shall be issued on the following terms and conditions:

(1) If the replacement title is issued to the owner named in the lost, stolen, mutilated, or destroyed certificate, as shown by the records of the commissioner or authorized county tag agent, the replacement certificate of title shall contain the legend:

"This is a replacement certificate and may be subject to the rights of a person under the original certificate.";

(2) When the vehicle for which a replacement certificate of title has been issued is transferred to a new owner, the certificate of title issued to the transferee shall continue to contain the legend:

"This is a replacement certificate and may be subject to the rights of a person under the original certificate."

After a replacement certificate has been issued and the records of the commissioner or authorized county tag agent show that the owner has held record title continuously for a period of not less than six calendar months and the record title of the owner has not been challenged, the commissioner or authorized county tag agent may, upon proper application, issue a replacement title, which shall simply contain the legend "Replacement Title";

(3) A person recovering an original certificate of title for which a replacement has been issued shall promptly surrender the original certificate to the commissioner or authorized county tag agent. Where the owner named in a replacement certificate of title, or a transferee, recovers the original certificate such owner or transferee may surrender the original certificate together with the replacement title and if such owner or transferee is otherwise entitled to a certificate the commissioner or authorized county tag agent may issue such owner or transferee a new certificate of title with no legend thereon;

(4) If two or more innocent persons are the victims of the fraud or mistake of another and none of the victims could have reasonably taken steps to detect or prevent the fraud or mistake, the victim who first acquired an interest in a vehicle through any certificate of title shall have such victim's interest protected; and

(5) A replacement title when the original has been lost in the mail prior to receipt by the registered owner shall be issued by the commissioner without charge upon application and completion of the form and affidavit prescribed by the commissioner setting forth the circumstances of nonreceipt of the title. The owner shall report the nonreceipt or loss and apply for replacement of the title to the commissioner within 60 days of the issuance of such title by the commissioner. An applicant shall provide an affidavit of nonreceipt and verify his or her current mailing address. (Ga. L. 1961, p. 68, § 14; Ga. L. 1965, p. 304, § 3; Ga. L. 1974, p. 593, § 1; Ga. L. 1977, p. 252, §§ 1, 2; Code 1981, § 40-3-30; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 438, § 3; Code 1981, § 40-3-31, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 97, § 40; Ga. L. 1997, p. 739, § 14; Ga. L. 1998, p. 1179, § 34.)

JUDICIAL DECISIONS

Acquisition of title through fraud or mistake. — When the pawnbroker could have perfected a lien long before the expiration of six months after even the second replacement title was issued, this would have been a reasonable step to prevent the fraud perpetrated upon the defendants; therefore, the pawnbroker was not an innocent party pursuant to O.C.G.A. § 40-3-31(4). *Cobb Ctr. Pawn & Jewelry Brokers, Inc. v. Gordon*, 242 Ga. App. 73, 529 S.E.2d 138 (2000).

Clerical error. — Trial court erred in concluding that the security interest holder had a valid, perfected security interest that the court could enforce against the car buyer regarding the car pur-

chased, based on O.C.G.A. § 40-3-31(4), as that statutory section pertained to lost, stolen, mutilated, or destroyed certificates of title; the car buyer's certificate of title did not reflect the security interest because the state motor vehicles department made a clerical error and issued a certificate of title without the security interest. *Metzger v. Americredit Fin. Svcs.*, 273 Ga. App. 453, 615 S.E.2d 120 (2005).

Cited in *In re Firth*, 363 F. Supp. 369 (M.D. Ga. 1973); *First Nat'l Bank v. National Dealer Svcs., Inc.*, 155 Ga. App. 384, 270 S.E.2d 911 (1980); *Martin v. State*, 160 Ga. App. 275, 287 S.E.2d 244 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Security interest of used car dealer. — Failure of a used car dealer to be listed on the certificate of title as an owner or security interest holder does not affect the

creation of the security interest and all the rights attached thereto including repossession. 1990 Op. Att'y Gen. No. 90-8.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 100 et seq.
U.L.A. — Uniform Motor Vehicle Certif-

icate of Title and Anti-Theft Act (U.L.A.) § 13.

40-3-31.1. Replacement certificates of title for mobile homes.

Repealed by Ga. L. 2003, p. 430, § 2, effective May 31, 2003.

Editor's notes. — This Code section 1997, p. 739, § 15. For present comparison was based on Code 1981, § 40-3-31.1, enacted by Ga. L. 1994, p. 741, § 3; Ga. L. seq. provisions, see Code Section 8-2-180 et seq.

40-3-32. Transfer of vehicle generally.

(a) If an owner transfers his interest in a vehicle other than by the creation of a security interest, he shall, at the time of delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of title or as the commissioner prescribes and cause the certificate and assignment to be delivered to the transferee. If the transferor willfully fails to deliver the properly assigned certificate of title to the transferee, the transferor shall be guilty of a misdemeanor. In addition, the transferor shall be civilly liable to the transferee for all damages, including reasonable attorney's fees, occasioned by the transferor's failure to comply with this subsection.

(b) Except as provided in Code Section 40-3-33, the transferee, promptly after delivery to him of the vehicle and certificate of title, shall execute the application for a new certificate of title on the form the commissioner prescribes and cause the application and the certificate of title to be mailed or delivered to the commissioner or his appropriate authorized county tag agent together with the application for change of registration for the vehicle, so that the title application shall be received within 30 days from the date of the transfer of the vehicle. If the title application is not received within that time, the owner shall be required to pay a penalty of \$10.00 in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. If the documents are not properly resubmitted within 60 days, there shall be an additional \$10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return same to the commissioner. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required under this subsection.

(c) If a security interest is reserved or created at the time of the transfer, the certificate of title shall be retained by or delivered to the person who becomes the lienholder, and the parties shall comply with Code Section 40-3-51.

(d) Except as provided in Code Section 40-3-33 and as between the parties, a transfer by an owner is not effective until this Code section and Code Section 40-3-33 have been complied with; and no purchaser or

transferee shall acquire any right, title, or interest in and to a vehicle purchased by him unless and until he shall obtain from the transferor the certificate of title thereto, duly transferred in accordance with this Code section.

(e) The commissioner shall promulgate procedures and provide forms whereby a prospective purchaser may, if such prospective purchaser desires, have the commissioner's or the commissioner's duly authorized county tag agent's records searched for undisclosed certificates of title and security interests. (Ga. L. 1961, p. 68, § 15; Ga. L. 1981, p. 883, § 5; Code 1981, § 40-3-31; Ga. L. 1986, p. 438, § 4; Code 1981, § 40-3-32, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 16; Ga. L. 2007, p. 652, § 9/HB 518.)

Law reviews. — For article surveying insurance law in 1984-1985, see 37 Mercer L. Rev. 275 (1985).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-207 are included in the annotations for this Code section.

Necessity of compliance with registration and transfer provisions. — It was the intent of the legislature that compliance with the provisions of Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40), respecting the registration and transfer of titles to automobiles coming under its provisions, be essential to vest title to an automobile as manifest by the language of Ga. L. 1961, p. 68, § 15 (see O.C.G.A. § 40-3-32). *Wreyford v. Peoples Loan & Fin. Corp.*, 111 Ga. App. 221, 141 S.E.2d 216 (1965).

Purchaser of vehicle on which certificate not previously issued. — Former § 40-3-31 cannot serve to deny passing of right, title, or interest to a purchaser of a vehicle on which a certificate of title had not previously been issued, especially in light of the statutory scheme which contemplated a possible considerable lapse of time between the actual purchase of a new vehicle and the issuance of the certificate of title. *Owensboro Nat'l Bank v. Jenkins*, 173 Ga. App. 775, 328 S.E.2d 399 (1985); *First Nat'l Bank v. Atlanta Classic Cars, Inc.*, 184 Ga. App. 784, 363 S.E.2d 16 (1987);

Bank S. v. Zweig, 217 Ga. App. 77, 456 S.E.2d 257 (1995) (see O.C.G.A. § 40-3-32).

Delivery of sworn assignment and warranty of title. — Upon transfer of ownership it is required that transferor deliver sworn assignment and warranty of title to transferee on the certificate of title and until this is done, except as between the parties, the transferee obtains no interest in the vehicle. *Farmers & Merchants Bank v. Holloway*, 159 Ga. App. 645, 284 S.E.2d 661 (1981).

Evidence of ownership. — Certificate of title is prima-facie evidence of title ownership and possession alone will not suffice. *Flatau v. Bank of Banks County* (In re Stewart), 9 Bankr. 32 (Bankr. M.D. Ga. 1980).

Mobile home falls within the provisions. *Rockwin Corp. v. Kincaid*, 124 Ga. App. 570, 184 S.E.2d 509 (1971).

Transfer of mobile home by real estate warranty deed. — When a motor home is not fixed to the earth so as to irrevocably lose the mobile home's identity as a vehicle and, at the time the mobile home is placed upon the real estate, it is the intent of the seller, the purchaser, and the land seller that the mobile home will remain as personalty, the Motor Vehicle Title Act controls and requires a proper transfer of title to vest

any interest. There can be no transfer of the personalty through the real estate warranty deed, especially when the property owner has constructive notice of a lienholder's interest in the mobile home. *Anderson v. Kensington Mtg. & Fin. Corp.*, 166 Ga. App. 604, 305 S.E.2d 128 (1983).

Applicability dependent on prior issuance of certificate. — Ga. L. 1961, p. 68, § 15 only applies when vehicle has previously been issued certificate of title by state revenue commissioner. *Rockwin Corp. v. Kincaid*, 124 Ga. App. 570, 184 S.E.2d 509 (1971); *Wielgorecki v. White*, 133 Ga. App. 834, 212 S.E.2d 480 (1975) (see O.C.G.A. § 40-3-32).

Transferors and transferees excepted. — Even though the provisions of Ga. L. 1961, p. 68 may be mandatory in some situations, transactions between the parties themselves, that is, the transferors and the transferees, are excepted from those provisions. *Allen v. Holloway*, 119 Ga. App. 676, 168 S.E.2d 196 (1969) (see O.C.G.A. Ch. 3, T. 40).

Strict compliance when third party rights involved. — As between parties or when third party interests are not involved, substantial compliance with the provisions of the law may be sufficient, but the language of Ga. L. 1961, p. 68, § 15 is clear that when third party rights are involved, this is not the case. *Flatau v. Bank of Banks County (In re Stewart)*, 9 Bankr. 32 (Bankr. M.D. Ga. 1980) (see O.C.G.A. § 40-3-32).

As to third parties, essential that transfer be completed. — Ga. L. 1961, p. 68, § 15 recognizes that as between the parties an ownership may change hands without the necessity of transferring a title certificate by the seller and obtaining a new one in the name of the purchaser; however, as to third parties who may acquire an interest, it is essential that the title transfer be completed. *Canal Ins. Co. v. Woodard*, 121 Ga. App. 356, 173 S.E.2d 727 (1970) (see O.C.G.A. § 40-3-32).

Sale held complete without actual passing of certificate. — Evidence authorized the finding by the fact finder that, pursuant to the parties' understanding, the title to a motor vehicle passed to the buyer at the time the buyer received

physical possession with the seller holding the certificate as security only for the final payment of \$50.00, which document was to be delivered at such time and place as the indebtedness was paid, and that, consequently, the sale was complete and the seller's uninsured motorist coverage on the vehicle was no longer in effect. *Stone v. Nolan*, 171 Ga. App. 644, 320 S.E.2d 781 (1984).

Evidence showed that a car dealership sold the dealership's interest in a car to the buyer before a collision where the father signed purchase and financing documents relating to the car sale, a credit company financed the purchase in the buyer's name and paid the dealership the car's purchase price, and the buyer's daughter took possession of the vehicle, regardless of whether an application for a certificate of title was filed before or after the collision. *West v. Village Ford-Mercury, Inc.*, 256 Ga. App. 18, 567 S.E.2d 355 (2002).

While a buyer of a motor home on consignment was entitled to summary judgment after the dealer never paid the consignors, when the consignors refused to execute an assignment and warranty of title when the buyer sought those documents, the buyer was entitled to damages, including reasonable attorney's fees under O.C.G.A. § 40-3-32(a). *Smith v. Hardeman*, 281 Ga. App. 402, 636 S.E.2d 106 (2006).

Automobile broker. — Automobile broker authorized by owner to sell vehicle was not third party within the meaning of former § 40-3-31 (see O.C.G.A. § 40-3-32). *McDowell v. Owens*, 170 Ga. App. 421, 317 S.E.2d 275 (1984).

Gifts may convey title. — There is nothing in Ga. L. 1961, p. 68 which prevents gifts from conveying title as between the legal representative of a deceased transferor and the transferee. *Allen v. Holloway*, 119 Ga. App. 676, 168 S.E.2d 196 (1969) (see O.C.G.A. Ch. 3, T. 40).

Vehicle's registration in name of person holding unassigned certificate. — It is presumed, unless rebutted, that where a person holds an unassigned certificate of registration on a vehicle, the registration of the vehicle is still in the

person's on the records of the State Revenue Commission. *Jones v. State*, 83 Ga. App. 301, 63 S.E.2d 414 (1951) (decided under former Code 1933, § 68-207).

Equitable interest in vehicle has priority over judicial lien. — Trustee, in the trustee's capacity as a hypothetical judicial lien creditor under 11 U.S.C. § 544(a)(1), did not prevail over an equitable interest in an automobile since the certificate of title was issued in the debtor's name and the name of the party claiming the equitable interest was not listed on the certificate of title. *Wenco Indus., Inc. v. Stalzer* (In re Davis), 165 Bankr. 327 (Bankr. N.D. Ga. 1994).

Equitable interest in vehicle has priority over interest asserted by trustee in bankruptcy. — Creditor that had an equitable priority interest in the vehicles that had been owned by a debtor, pursuant to an agreement to purchase the creditor's business, had an interest that was superior to a trustee's authority to avoid a lien interest pursuant to 11 U.S.C. § 544 and the creditor was entitled to assert a claim in the sale proceeds of the vehicles. *BCC Sys. v. Brooks* (In re BCC Sys.), No. 05-84208-CRM, 2008 Bankr. LEXIS 1906 (Bankr. N.D. Ga. Apr. 18, 2008).

Sale complete except for compliance with recording and insurance provisions. — When a seller delivered possession of the automobile to the buyer and the transaction was complete as between them, even though compliance had not yet been made with the applicable recording and insurance provisions, the buyer was the "owner" of the automobile and the buyer alone, and not the seller or the seller's insurer, was liable to a third party for injuries sustained in an accident while the buyer was driving the automobile. *American Mut. Fire Ins. Co. v. Cotton States Mut. Ins. Co.*, 149 Ga. App. 280, 253 S.E.2d 825 (1979).

When an auto insurance policy required the insured to notify the insurer and pay an additional premium within 30 days of becoming the owner of a vehicle, the key to coverage under the policy was the date the insured became the owner, not the date the car came into service as a means of transportation, nor the date of issuance

of the certificate of title. *Noakes v. Atlanta Cas. Cos.*, 215 Ga. App. 398, 450 S.E.2d 861 (1994).

Ownership proved although vehicle not registered. — Claimant who appeared and demanded possession as owner of an automobile which was the subject of a civil forfeiture action established a sufficient ownership interest as against the state by proof of claimant's payment of valuable consideration and receipt of the certificate of title from the transferor, even though the claimant failed to register the vehicle. *State v. Banks*, 215 Ga. App. 828, 452 S.E.2d 533 (1994).

Automobile dealer relieved of duty of securing title in own name. — Former § 40-3-32 (now O.C.G.A. § 40-3-33) relieves a dealer in automobiles of the duty imposed upon other transferees by Ga. L. 1961, p. 68, § 15 of securing a new title certificate from the state revenue commissioner in the name of the dealer. *Wreyford v. Peoples Loan & Fin. Corp.*, 111 Ga. App. 221, 141 S.E.2d 216 (1965) (see O.C.G.A. § 40-3-32).

Transfer to otherwise conform with section. — While an automobile dealer, in the event of a purchase by the dealer of a vehicle which the dealer holds for resale, does not have to apply for and receive a title in the dealer's name in order to be protected against an unperfected security interest, the transfer to the dealer shall otherwise conform with the provisions of Ga. L. 1961, p. 68, § 15. *Frank Jackson Motors, Inc. v. Mortgage Enters., Inc.*, 124 Ga. App. 798, 186 S.E.2d 464 (1971) (see O.C.G.A. § 40-3-32).

Requirements for perfecting dealer's title. — In order for the "title" of the dealer to be perfected, the dealer must be in possession of a certificate of title upon which, or by separate paper, an assignment and warranty of title has been subscribed and sworn to by the transferor before an officer authorized by law to administer oaths in the state. *Farmers & Merchants Bank v. Holloway*, 159 Ga. App. 645, 284 S.E.2d 661 (1981).

Substantial compliance. — When the dealer, at the time of delivery of the car, did not literally comply with the law by executing an assignment and warranty of

title on the reverse of the certificate, but substantially complied by the execution of a bill of sale from the dealer to the purchaser, whereupon the purchaser executed an application for a new certificate of title in the purchaser's name, and these documents (the existing certificate of title, the title application, and the bill of sale) were delivered on behalf of the purchaser to the lienholder, who caused the documents to be mailed or delivered to the commissioner, title of the automobile passed to the purchaser, and the dealer's subsequent purported transfer of ownership of the automobile was void. *Cochran v. Harris*, 123 Ga. App. 212, 180 S.E.2d 290, appeal dismissed, 227 Ga. 638, 182 S.E.2d 121 (1971).

Trial court erred in denying the state's in rem forfeiture action and adjudicating a husband an innocent owner of a vehicle the state seized when his wife was arrested for possessing methamphetamine and other crimes because the husband lacked title to the car, and any other interest he could have had was in community with the wife since the husband assigned his interest in the car to the wife and the certificate itself listed the purchase date as one day before the seizure;

thus, pursuant to the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-32, the assignment to the wife was completed one day before the seizure, and the husband had no ownership interest in the vehicle on that day. *State v. Centers*, 310 Ga. App. 413, 713 S.E.2d 479 (2011).

Cited in *Mote v. Mote*, 134 Ga. App. 668, 215 S.E.2d 487 (1975); *McMath v. Columbus Bank & Trust Co.*, 136 Ga. App. 723, 222 S.E.2d 177 (1975); *Simson v. Moon*, 137 Ga. App. 82, 222 S.E.2d 873 (1975); *Rome Bank & Trust Co. v. Bradshaw*, 143 Ga. App. 152, 237 S.E.2d 612 (1977); *Canal Ins. Co. v. P & J Truck Lines*, 145 Ga. App. 545, 244 S.E.2d 81 (1978); *McConnell v. Barrett*, 154 Ga. App. 767, 270 S.E.2d 13 (1980); *United Carolina Bank v. Sistrunk*, 158 Ga. App. 107, 279 S.E.2d 272 (1981); *Greenway v. Cheatwood*, 160 Ga. App. 143, 286 S.E.2d 471 (1981); *Goger v. King*, 17 Bankr. 64 (Bankr. N.D. Ga. 1981); *State v. 1977 Pontiac*, 163 Ga. App. 456, 294 S.E.2d 660 (1982); *Brown v. Citizens & S. Nat'l Bank*, 253 Ga. 119, 317 S.E.2d 180 (1984); *Atlas Casing Co. v. Joyner*, 192 Ga. App. 738, 386 S.E.2d 397 (1989); *Right Touch of Class, Inc. v. Superior Bank, FSB*, 244 Ga. App. 473, 536 S.E.2d 181 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Certificate of title on older model vehicles. — Neither Ga. L. 1961, p. 68, § 15 (see O.C.G.A. § 40-3-32) nor Ga. L.

1961, p. 68, § 16 (see O.C.G.A. § 40-3-33) requires a certificate of title on older model vehicles. 1962 Op. Att'y Gen. p. 306.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 45.

C.J.S. — 60 C.J.S., Motor Vehicles, § 75 et seq.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 14.

ALR. — Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 37 ALR 1465; 52 ALR 701; 63 ALR 688; 94 ALR 948; 58 ALR2d 1351.

40-3-32.1. Application for transfer of title to local tag agent by purchaser of manufactured home; payment of ad valorem taxes required for new certificate.

In addition to any other requirements imposed by this chapter for the transfer of a certificate of title, the purchaser of a manufactured home shall submit an application for a transfer of title to the local tag agent

in the county in which the manufactured home is to be installed, which application shall indicate the full serial number for such manufactured home and shall be accompanied by a certificate of the tax commissioner or tax collector of the county in which the manufactured home was previously installed, if different, stating that all ad valorem taxes assessed against such manufactured home have been paid. No new certificate of title shall be issued for a manufactured home unless all ad valorem taxes on such home have been paid. (Code 1981, § 40-3-32.1, enacted by Ga. L. 1994, p. 741, § 4.)

40-3-33. Transfer of vehicle to or from dealer; records to be kept by dealers.

(a)(1) Except as provided in paragraph (2) of this subsection, a dealer who buys a vehicle and holds it for resale need not apply to the commissioner for a new certificate of title but may retain the certificate delivered to him. Upon transferring the vehicle to another person other than by the creation of a security interest, such dealer shall promptly execute the assignment and warranty of title by a dealer. Such assignment and warranty shall show the names and addresses of the transferee and any holder of a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided therefor on the certificate or as the commissioner prescribes. Transfers of vehicles under this Code section shall otherwise conform with Code Section 40-3-32. A dealer selling a previously registered vehicle which under this chapter need not have a certificate of title need not furnish a purchaser of such a vehicle a certificate of title. After a previously registered vehicle has been brought under the terms of this chapter, a dealer, when selling that vehicle, shall conform to all provisions of this chapter.

(2)(A) As used in this paragraph, the term "franchise dealer" means a dealer who under a contract or franchise agreement with a manufacturer, distributor, wholesaler, or importer is authorized to sell new motor vehicles of or for such manufacturer, distributor, wholesaler, or importer and who is authorized to use trademarks or service marks associated with one or more makes of motor vehicles in connection with such sales.

(B) A dealer who is not a franchise dealer who acquires a vehicle for which the original certificate of title has not been issued and who holds such vehicle for resale shall not be exempt from the requirement to obtain a certificate of title in such dealer's name as provided in paragraph (1) of this subsection. Such dealer shall, as provided in Code Section 40-3-32, obtain a certificate of title in such dealer's name prior to selling or otherwise transferring said vehicle to any other person or dealer.

(b) Every dealer shall maintain a record, in the form the commissioner prescribes, of every vehicle bought, sold, or exchanged by him, or received by him for sale or exchange. Such record shall be kept for three years and shall be open to inspection by a representative of the commissioner during reasonable business hours.

(c) Except as otherwise provided for in subsection (c) of Code Section 40-3-32, the dealer shall submit a properly completed certificate of title application and proper supporting documents to the commissioner or to the appropriate authorized county tag agent so that the application and supporting documents shall be submitted to the commissioner or the appropriate authorized county tag agent within 30 days from the date of the transfer of the vehicle. If the application and supporting documents are not submitted within that time, the dealer shall be required to pay a penalty of \$10.00 in addition to the ordinary title fee as provided by this chapter. If the documents submitted in support of the title application are rejected, the dealer submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. If the documents are not properly resubmitted within 60 days, there shall be an additional penalty of \$10.00 assessed against the dealer. The willful failure of a dealer to obtain a certificate of title for a purchaser shall be grounds for suspension or revocation of the dealer's state issued license and registration for the sale of motor vehicles. (Ga. L. 1961, p. 68, § 16; Ga. L. 1965, p. 304, § 4; Ga. L. 1981, p. 883, § 6; Code 1981, § 40-3-32; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 438, § 5; Code 1981, § 40-3-33, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2785, § 2; Ga. L. 2007, p. 652, § 10/HB 518.)

Cross references. — Regulation of used car dealers generally, T. 43, C. 47.

Administrative rules and regulations. — Dealer Tags (Permits for Dem-

onstration Purposes), Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-8.

JUDICIAL DECISIONS

Delivery of sworn assignment and warranty of title to transferee. — Upon transfer of ownership it is required that transferor deliver sworn assignment and warranty of title to transferee on the certificate of title and until this is done, except as between the parties, the transferee obtains no interest in the vehicle. *Farmers & Merchants Bank v. Holloway*, 159 Ga. App. 645, 284 S.E.2d 661 (1981).

No duty for dealer to secure title in own name. — Ga. L. 1961, p. 68, § 16 (see O.C.G.A. § 40-3-33) relieves a dealer in automobiles of the duty imposed upon

other transferees by Ga. L. 1961, p. 68, § 15 (see O.C.G.A. § 40-3-32) of securing a new title certificate from the state revenue commissioner in the name of the dealer. *Wreyford v. Peoples Loan & Fin. Corp.*, 111 Ga. App. 221, 141 S.E.2d 216 (1965).

Necessity of complying with provisions. — While an automobile dealer, in the event of a purchase by the dealer of a vehicle which the dealer holds for resale, does not have to apply for and receive a title in the dealer's name in order to be protected against an unperfected security

interest, the transfer to the dealer shall otherwise conform with the provisions of Ga. L. 1961, p. 68, § 15. *Frank Jackson Motors, Inc. v. Mortgage Enters., Inc.*, 124 Ga. App. 798, 186 S.E.2d 464 (1971) (see O.C.G.A. § 40-3-32).

Requirements for perfecting dealer's title. — In order for the "title" of the dealer to be perfected the dealer must be in possession of a certificate of title upon which, or by separate paper, an assignment and warranty of title has been subscribed and sworn to by the transferor before an officer authorized by law to administer oaths in the state. *Farmers & Merchants Bank v. Holloway*, 159 Ga. App. 645, 284 S.E.2d 661 (1981).

Requirements for passing of title to purchaser. — When the dealer, at the time of delivery of the car, did not literally comply with the law by executing an assignment and warranty of title on the reverse of the certificate, but substantially complied by the execution of a bill of sale from the dealer to the purchaser, whereupon the purchaser executed an application for a new certificate of title in the purchaser's name, and these documents (the existing certificate of title, the title application, and the bill of sale) were delivered on behalf of the purchaser to the lienholder, who causes the documents to be mailed or delivered to the commis-

sioner, title of the automobile passed to the purchaser, and the dealer's subsequent purported transfer of ownership of the automobile was void. *Cochran v. Harris*, 123 Ga. App. 212, 180 S.E.2d 290, appeal dismissed, 227 Ga. 638, 182 S.E.2d 121 (1971).

Sale held complete without actual passing of certificate. — While a buyer of a motor home on consignment was entitled to summary judgment after the dealer never paid the consignors, when the consignors refused to execute an assignment and warranty of title when the buyer sought those documents the buyer was entitled to damages including reasonable attorney's fees under O.C.G.A. § 40-3-32(a). *Smith v. Hardeman*, 281 Ga. App. 402, 636 S.E.2d 106 (2006).

Cited in *Rome Bank & Trust Co. v. Bradshaw*, 143 Ga. App. 152, 237 S.E.2d 612 (1977); *Blakely & Son v. Humphreys*, 148 Ga. App. 281, 250 S.E.2d 826 (1978); *McConnell v. Barrett*, 154 Ga. App. 767, 270 S.E.2d 13 (1980); *United Carolina Bank v. Sistrunk*, 158 Ga. App. 107, 279 S.E.2d 272 (1981); *State v. 1977 Pontiac*, 163 Ga. App. 456, 294 S.E.2d 660 (1982); *Cobb Ctr. Pawn & Jewelry Brokers, Inc. v. Gordon*, 242 Ga. App. 73, 529 S.E.2d 138 (2000); *Right Touch of Class, Inc. v. Superior Bank, FSB*, 244 Ga. App. 473, 536 S.E.2d 181 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Older model vehicles. — Neither Ga. L. 1961, p. 68, § 15 (see O.C.G.A. § 40-3-32) nor Ga. L. 1961, p. 68, § 16 (see O.C.G.A. § 40-3-33) requires a certificate of title on older model vehicles. 1962 Op. Att'y Gen. p. 306.

Transfer of salvage titles. — Licensed used motor vehicle parts dealer

can transfer salvage titles without being licensed as a used motor vehicle dealer provided that such dealer complies with Ga. L. 1961, p. 68 and rules and regulations of the State Revenue Commissioner relating to salvage vehicles. 1998 Op. Att'y Gen. No. 98-14 (see O.C.G.A. Ch. 3, T. 40).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 35 et seq., 49, 51.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 75 et seq., 96 et seq.

U.L.A. — Uniform Motor Vehicle Certi-

fication of Title and Anti-Theft Act (U.L.A.) § 15.

ALR. — Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 52 ALR 701; 63 ALR 688; 94 ALR 948; 58 ALR2d 1351.

40-3-34. Transfer of vehicle by operation of law; joint interest with survivorship.

(a) If the interest of an owner in a vehicle passes to another other than by voluntary transfer, the transferee shall, except as provided in subsection (b) of this Code section, mail or deliver to the commissioner or his appropriate authorized county tag agent the last certificate of title, if available; proof of the transfer; and his application for a new certificate in the form the commissioner prescribes, together with the application for change of registration for the vehicle so that the title application and other documents shall be received by the commissioner or his appropriate authorized county tag agent no later than 30 days from the date that the transferee acquired the interest in the vehicle. If the title application and other documents are not received within that time, the transferee shall be required to pay a penalty of \$10.00 in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. Should the documents not be properly resubmitted within the 60 day period, there shall be an additional \$10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return same to the commissioner. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required in this subsection. If the last certificate of title is not available for transfer under this Code section, then the transferee shall forward such proof of transfer as the commissioner may by regulation prescribe.

(b) If the interest of the owner is terminated, whether the vehicle is sold pursuant to a power contained in a security agreement or by legal process at the instance of the holder either of a security interest or a lien, the transferee shall promptly mail or deliver to the commissioner or his appropriate authorized county tag agent the last certificate of title, if available; proof of transfer; his application for a new certificate, in the form prescribed by the commissioner; and an affidavit made by or on behalf of the holder of a security interest in or lien on the vehicle with respect to the termination of the interest of the owner, so as to have the application and supporting documents submitted to the commissioner or his appropriate authorized county tag agent within 30 days from the date the transferee acquired the interest in the vehicle. If the application and supporting documents are not submitted within that time, the transferee shall be required to pay a penalty of \$10.00 in addition to the ordinary title fee prescribed by this chapter. If the documents submitted in support of the title application are rejected, the

transferee submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner for the issuance of title. If the documents are not properly resubmitted within 60 days, there shall be an additional \$10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return same to the commissioner. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required under this subsection. If the holder of a security interest or lien succeeds to the interest of the owner and holds the vehicle for resale, he need not secure a new certificate of title but, upon transfer, shall promptly deliver to the transferee the last certificate of title, if available, and such other documents as the commissioner may require by rule or regulation.

(c) A person holding a certificate of title whose interest in the vehicle has been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the commissioner or the commissioner's duly authorized county tag agent upon request of the commissioner or authorized county tag agent. The delivery of the certificate pursuant to the request of the commissioner or authorized tag agent does not affect the rights of the person surrendering the certificate; and the action of the commissioner or authorized tag agent in issuing a new certificate of title as provided in this article is not conclusive upon the rights of an owner or lienholder named in the old certificate.

(d) In the event of transfer as upon inheritance, devise, or bequest, upon receipt of an application for a new certificate of title with the required fee, the last certificate of title, if available, and a certified copy of a will or letters of administration or, if no administration is to be had on the estate, an affidavit by the applicant to the effect that the estate is not indebted and the surviving spouse, if any, and the heirs, if any, have amicably agreed among themselves upon a division of the estate or a certificate from the judge of the probate court showing that the motor vehicle registered in the name of the decedent owner has been assigned to the decedent's survivors as part of their year's support, the commissioner shall issue to the person or persons shown by such evidence to be entitled thereto the certificate of title for the vehicle.

(e)(1) In the event of transfer under a will when the motor vehicle was the decedent's only asset, upon receipt of an application for a new certificate of title accompanied by the required fee, the last certificate of title, if available, and an affidavit by the applicant to the effect that the motor vehicle was owned by the decedent and was the decedent's only asset and was not encumbered, that under the will the applicant is entitled to receive title to such motor vehicle, that no application

for the administration of the estate of the deceased or the probate of such will is to be had, and that the estate is not indebted and the surviving spouse, if any, and the heirs, if any, are sui juris and have amicably agreed that title to said vehicle be issued to the applicant, the commissioner shall issue to the person or persons shown by such evidence to be entitled thereto the certificate of title for the vehicle.

(2) The commissioner shall prescribe the form of the affidavit to be used in paragraph (1) of this subsection.

(f) A joint interest in a vehicle with survivorship in two or more persons may be created in the manner provided by subsection (a) of Code Section 44-6-190; and, if a certificate of title has been issued to two or more persons having such a joint interest with survivorship, then, in the event of the death of such a joint owner, the surviving such owner or owners, if any, need not secure a new certificate of title. (Ga. L. 1961, p. 68, § 17; Ga. L. 1962, p. 79, § 10; Ga. L. 1981, p. 883, § 7; Code 1981, § 40-3-33; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 281, § 1; Code 1981, § 40-3-34, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 17; Ga. L. 1998, p. 510, § 1; Ga. L. 2007, p. 652, § 11/HB 518.)

Law reviews. — For annual survey of law of wills, trusts, and administration of estates, see 38 Mercer L. Rev. 417 (1986).

JUDICIAL DECISIONS

Termination of debtor's ownership interest. — O.C.G.A. § 40-3-34(b) clearly recognizes that a debtor's ownership of collateral is not terminated until the sale of the collateral by the secured creditor or by legal process; therefore, an automobile that was repossessed pre-petition, but which had not been sold by the creditor pre-petition, was the property of the debtor's Chapter 13 bankruptcy estate. *Rozier v. Motors Acceptance Corp.* (In re *Rozier*), 283 B.R. 810 (Bankr. M.D. Ga. 2002), *aff'd* sub nom. *Motors Acceptance Corp. v. Rozier*, 290 Bankr. 910 (M.D. Ga. 2003).

When a debtor's vehicle was part of the debtor's bankruptcy estate under Georgia law, return of the vehicle was proper despite the creditor's objections as ownership remained with the debtor until the creditor disposed of or elected to retain the collateral in accordance with the procedures of the Georgia Uniform Commercial Code, O.C.G.A. Ch. 4, T. 11. *Motors Acceptance Corp. v. Rozier*, 278 Ga. 52, 597 S.E.2d 367 (2004).

Cited in *Flournoy v. City Fin. of Columbus, Inc.*, 679 F.2d 821 (11th Cir. 1982).

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Transfer of title by executor of deceased. — When title to a vehicle is in a deceased person, and the person has died testate, the executor, in order to transfer the title, must present a certified copy of

the will to the commissioner; if the former owner has died intestate, the administrator must present a copy of the letters of administration. 1970 Op. Att'y Gen. No. U70-57.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 45.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 75 et seq., 96 et seq.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 16.

40-3-35. When commissioner to issue new certificate to transferee; filing and retention of surrendered certificates.

(a) The commissioner or the commissioner's duly authorized county tag agent, upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee, and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner and mail the certificate to the first lienholder named in the application or, if none, to the owner.

(b) The commissioner or the commissioner's duly authorized county tag agent, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee, and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to the commissioner or the authorized county tag agent, the commissioner or authorized county tag agent shall make demand therefor from the holder thereof.

(c) The commissioner or the commissioner's duly authorized county tag agent shall file and retain for five years every surrendered certificate of title, the file to be maintained so as to permit the tracing of title of the vehicle designated therein. (Ga. L. 1961, p. 68, § 19; Code 1981, § 40-3-34; Code 1981, § 40-3-35, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 18.)

Law reviews. — For note on 1990 amendment of this Code section, see 7 Georgia. St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

Cited in GMAC v. Whisnant, 387 F.2d 774 (5th Cir. 1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 77 et seq. 100 et seq.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 18.

40-3-35.1. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, former Code Section 40-3-35.1 as present § 3, effective July 1, 1990, redesignated Code Section 40-3-37.

40-3-35.2. Duty of Georgia Bureau of Investigation to inspect certain motor vehicles; authority to employ persons to carry out such inspections.

Repealed by Ga. L. 1987, p. 626, § 2, effective July 1, 1987.

Editor's notes. — This Code section was based on Ga. L. 1981, p. 644, § 3 and Ga. L. 1982, p. 403, §§ 2, 4.

40-3-36. Cancellation of certificate of title for scrap, dismantled, or demolished vehicles or trailers; salvage certificate of title; administrative enforcement; removal of license plates.

(a)(1) Any registered owner or authorized agent of a registered owner who in any manner sells or disposes of any vehicle, including a trailer, as scrap metal or parts only or who scraps, dismantles, or demolishes a vehicle shall within 72 hours mail or deliver the certificate of title to the commissioner for cancellation.

(2) Notwithstanding any other provision of this article to the contrary, if the owner or authorized agent of the owner has not obtained a title in his or her name for the vehicle, including a trailer, to be transferred, or has lost the title for the vehicle or trailer to be transferred, he or she may sign a statement swearing that, in addition to the foregoing conditions, the vehicle or trailer is at least 12 model years old and is worth \$850.00 or less if the vehicle was used as a motor vehicle, or \$1,700.00 or less if the vehicle was used as a trailer. The statement described in this paragraph may be used only to transfer such a vehicle to a licensed used motor vehicle parts dealer under Code Section 43-47-7 or scrap metal processor under Code Section 43-43-1. The department shall promulgate a form for the statement which shall include, but not be limited to:

(A) A statement that the vehicle or trailer shall never be titled again; it must be dismantled or scrapped;

(B) A description of the vehicle including, where applicable, the year, make, model, vehicle identification number, and color;

(C) The name, address, and driver's license number of the owner;

(D) A certification that the owner:

- (i) Never obtained a title to the vehicle in his or her name; or
 - (ii) Was issued a title for the vehicle, but the title was lost or stolen;
- (E) A certification that the vehicle:
- (i) Is worth \$850.00 or less, or \$1,700.00 or less if the vehicle is a trailer;
 - (ii) Is at least 12 model years old; and
 - (iii) Is not subject to any secured interest or lien;
- (F) An acknowledgment that the owner realizes this form will be filed with the department and that it is a felony, punishable by imprisonment for not fewer than one nor more than three years or a fine of not less than \$1,000.00 nor more than \$5,000.00, or both, to knowingly falsify any information on this statement;
- (G) The owner's signature and the date of the transaction;
- (H) The name, address, and National Motor Vehicle Title Information System identification number of the business acquiring the vehicle;
- (I) A certification by the business that \$850.00 or less, or \$1,700.00 or less if the vehicle is a trailer, was paid to acquire the vehicle;
- (J) A certification that the business has verified by an on-line method determined by the commissioner that the vehicle is not currently subject to any secured interest or lien; provided, however, that such certification shall not be required until such an on-line method has been established and is available; and
- (K) The business agent's signature and date along with a printed name and title if the agent is signing on behalf of a corporation.
- (3)(A) The secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall mail or otherwise deliver the statement required under paragraph (2) of this subsection to the department within 72 hours of the completion of the transaction, requesting that the department cancel the Georgia certificate of title and registration.
- (B) Notwithstanding the requirement to mail or otherwise deliver the statement required under paragraph (2) of this subsection to the department, the department shall provide a mechanism for the receipt of the information required to be obtained in the statement by electronic means, at no cost to the secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor,

in lieu of the physical delivery of the statement, in which case the secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall maintain the original statement for a period of not less than two years.

(C) Within 48 hours of each day's close of business, the secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor who purchases or receives motor vehicles for scrap or for parts shall deliver in a format approved by the department, either by facsimile or by other electronic means to be made available by the department by January 1, 2012, a list of all such vehicles purchased that day for scrap or for parts. That list shall contain the following information:

(i) The name, address, and contact information for the reporting entity;

(ii) The vehicle identification numbers of such vehicles;

(iii) The dates such vehicles were obtained;

(iv) The names of the individuals or entities from whom the vehicles were obtained, for use by law enforcement personnel and appropriate governmental agencies only;

(v) A statement of whether the vehicles were, or will be, crushed or disposed of, or offered for sale or other purposes;

(vi) A statement of whether the vehicle is intended for export out of the United States; and

(vii) The National Motor Vehicle Title Information System identification number of the business acquiring the vehicle.

There shall be no charge to a secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor associated with providing this information to the department.

(D) For purposes of this subsection, the term "motor vehicle" shall not include a vehicle which has been crushed or flattened by mechanical means such that it is no longer the motor vehicle as described by the certificate of title, or such that the vehicle identification number is no longer visible or accessible, in which case the purchasing or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor shall verify that the seller has reported the vehicles in accordance with this subsection. Such verification may be in the form of a certification from the seller or contract between the seller and the purchasing or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal processor which clearly identifies the seller by a government issued photograph identification card, or em-

ployer identification number, and shall be maintained for a period of not less than two years.

(E) The information obtained by the department in accordance with this subsection shall be reported to the National Motor Vehicle Title Information System, in a format which will satisfy the requirement for reporting this information, in accordance with rules adopted by the United States Department of Justice in 28 C.F.R. 25.56.

(F) The information obtained by the department in accordance with this subsection shall be made available only to law enforcement agencies, and for purposes of canceling certificates of title, and shall otherwise be considered to be confidential business information of the respective reporting entities.

(G) All records required under the provisions of this Code section shall be maintained for a period of two years by the reporting entity and shall include a scanned or photocopied copy of the seller's or seller's representative's driver's license or state issued identification card.

(4)(A) The registered owner of any motor vehicle which is damaged to the extent that its restoration to an operable condition would require the replacement of the front clip assembly, which includes the fenders, hood, and bumper; the rear clip assembly, which includes the quarter panels, the floor panel assembly, and the roof assembly, excluding a soft top; the frame; and a complete side, which includes the fenders, door, and quarter panel shall mail or deliver the certificate of title to the commissioner for cancellation.

(B) A motor vehicle owner who retains possession of a damaged vehicle which is a salvage motor vehicle as defined in paragraph (11) of Code Section 40-3-2 shall surrender the license plates and registration for such vehicle, shall not operate such vehicle upon the roads of this state, and shall not sell, trade, or otherwise dispose of such vehicle prior to obtaining a salvage certificate of title for such vehicle.

(C) Any insurance company which acquires a damaged motor vehicle by virtue of having paid a total loss claim shall mail or deliver the certificate of title to the commissioner for cancellation. In every case in which a total loss claim is paid and the insurance company does not acquire such damaged motor vehicle, the insurance company paying such total loss claim, the vehicle owner, and the lienholder or security interest holder, as applicable, shall take the following steps to secure a salvage certificate of title for such motor vehicle:

(i) If the vehicle owner is in possession of the certificate of title, the owner shall deliver the certificate of title to the

insurance company prior to any payment of the claim, and the insurance company shall mail or deliver the certificate of title, an application for a salvage certificate of title, and the form provided by the commissioner for issuance of a salvage certificate of title;

(ii) If the certificate of title has been lost, destroyed, or misplaced, the vehicle owner shall, prior to payment of the claim on such vehicle, complete an application for a replacement title on the form provided by the commissioner and deliver such application and form to the insurance company and the insurance company shall mail or deliver such application and form to the commissioner for issuance of a replacement original title marked salvage;

(iii) If the lienholder or security interest holder has possession of the certificate of title, the vehicle owner shall complete an application for a replacement title on a form provided by the commissioner and shall deliver the completed form to the insurance company prior to the payment of the claim; the insurance company shall thereafter mail or deliver the application to the commissioner with notice of the payment of the total loss claim and the name and address of the lienholder or security interest holder in possession of the title. The commissioner shall mail notice to the lienholder or security interest holder that a total loss claim has been paid on the vehicle and that the title to such vehicle has been canceled, and the commissioner shall provide to the lienholder or security interest holder a salvage certificate of title for such vehicle, provided that the validity of the security interest shall not be affected by issuance of a salvage certificate of title. The lienholder or security interest holder shall, within ten days after receipt of such notice of total loss claim and cancellation of the original certificate of title, mail or deliver the canceled original certificate of title to the commissioner; or

(iv) For the sole purpose of payment of a total loss claim, for any vehicle ten years of age or older for which neither the vehicle owner nor the lienholder or security interest holder, if any, possesses a certificate of title, the vehicle owner shall deliver the vehicle license plate and certificate of registration for such vehicle to the insurance company prior to payment of any claim and the insurance company shall mail or deliver the license plate and certificate of registration to the commissioner with a completed form provided by the commissioner; provided, however, that the vehicle owner shall not operate such vehicle and the owner shall obtain a certificate of title for such vehicle as provided by law, which certificate of title shall then be subject to cancellation as provided in this paragraph.

(D) The department shall give priority to the title submissions provided for in subparagraph (C) of this paragraph and shall issue a salvage certificate of title for such vehicles within seven days of receipt of such submissions by an insurance company.

(a.1) In the case of a motor vehicle which is subject to more than one perfected security interest or lien which motor vehicle is a total loss, if the insurer is to acquire title to the damaged motor vehicle, the holder of the senior security interest or lien, upon receipt of the settlement proceeds of the insurance policy in accordance with Code Section 33-34-9, shall apply for a new certificate of title for a transferee other than by voluntary transfer in accordance with subsection (b) of Code Section 40-3-35, naming the insurer only as transferee.

(b) Except as provided in subsection (a) of this Code section, any person, firm, or corporation which purchases or otherwise acquires a salvage motor vehicle shall apply to the commissioner for a salvage certificate of title for such motor vehicle within 30 days of the purchase or acquisition of the motor vehicle or within 30 days of the payment of a total loss claim as provided in paragraph (4) of subsection (a) of this Code section to the registered owner of the salvage motor vehicle, if the person, firm, or corporation intends to operate or to sell, convey, or transfer the motor vehicle; and no such person, firm, or corporation shall sell, transfer, or convey a salvage motor vehicle until such person, firm, or corporation has applied for and obtained a salvage certificate of title.

(c) The application for a salvage certificate of title shall be made in a manner to be prescribed by the commissioner.

(d) Any certificate of title which is issued to a salvage motor vehicle, as provided for in this Code section, shall contain the word "salvage" on the face of the certificate in such a manner as the commissioner may prescribe, so as to indicate clearly that the motor vehicle described is a salvage motor vehicle. The legend "rebuilt" in no larger than 12 point font shall be placed on a certificate of title to a vehicle which was declared a salvage vehicle and subsequently repaired with less than two major component parts to restore the vehicle to an operable condition.

(e) Notwithstanding this subsection and subsections (c) and (d) of Code Section 40-3-37, the legend "rebuilt" shall only be required to be placed on the certificate of title to a vehicle which was declared a salvage vehicle on or after July 1, 2004, and which was subsequently rebuilt.

(f) As an alternative to criminal or other civil enforcement, the commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant to this Code section, may issue

an administrative fine not to exceed \$1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person has violated any provisions of this Code section or any regulations or orders promulgated under this Code section. The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this subsection shall be paid into the state treasury. The commissioner may file, in the superior court (1) wherein the person under order resides; (2) if such person is a corporation, in the county wherein the corporation maintains its principal place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this Code section or any order, rules, or regulations promulgated pursuant thereto.

(g) The Commissioner of Insurance is authorized to enforce the provisions of this Code section to the extent such provisions are applicable to insurers which are under the jurisdiction of the Insurance Department. The Commissioner of Insurance is also authorized to cooperate with the commissioner in enforcing this Code section and to provide the commissioner with any information acquired by the Commissioner of Insurance during any investigation or proceeding involving this Code section. Nothing in this subsection shall be construed to limit the powers and duties of the commissioner to enforce the provisions of this Code section as such provisions apply to insurers.

(h) It shall be unlawful for any person, firm, or corporation to violate the provisions of subsection (a), (b), or (c) of this Code section; and any person, firm, or corporation convicted of violating such provisions shall be guilty of a misdemeanor. Any owner of a salvage motor vehicle who transfers or attempts to transfer such vehicle without obtaining a salvage certificate of title for such vehicle shall be guilty of a misdemeanor of a high and aggravated nature, punishable by a fine not to exceed \$5,000.00. Any lienholder or security interest holder who, after notice by the commissioner of payment of a total loss claim and

cancellation of the title of a vehicle, fails or refuses to return the title to the commissioner or who surrenders the title to anyone other than the commissioner shall be guilty of a misdemeanor of a high and aggravated nature, punishable by a fine not to exceed \$5,000.00.

(i) The registered owner who retains possession of a salvage motor vehicle to whom a total loss claim has been paid shall promptly remove the license plate from such vehicle and return such plate to the commissioner for cancellation. An insurer which pays a total loss claim shall, on a form prescribed by the commissioner, notify the owner of the duty to remove and return such license plate for cancellation and of all inspection requirements for rebuilding or restoring such vehicle.

(j) As used in this Code section, the terms:

(1) "Scrap metal processor" shall have the same meaning as set forth in Code Section 43-43-1.

(2) "Secondary metals recycler" shall have the same meaning as set forth in Code Section 10-1-350.

(3) "Used motor vehicle parts dealer" shall have the same meaning as set forth in Code Section 43-47-2. (Ga. L. 1961, p. 68, § 20; Ga. L. 1965, p. 264, § 1; Ga. L. 1966, p. 139, § 1; Ga. L. 1970, p. 185, § 1; Ga. L. 1975, p. 1596, § 1; Ga. L. 1979, p. 1108, § 1; Ga. L. 1981, p. 644, §§ 2, 4; Code 1981, § 40-3-35; Ga. L. 1985, p. 1227, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 1657, § 5; Code 1981, § 40-3-36, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, §§ 6, 7; Ga. L. 1993, p. 1260, § 7; Ga. L. 1998, p. 1179, § 35; Ga. L. 2000, p. 951, § 4-7; Ga. L. 2002, p. 848, § 2; Ga. L. 2004, p. 452, § 2; Ga. L. 2007, p. 585, § 1/HB 171; Ga. L. 2007, p. 635, § 2/HB 183; Ga. L. 2007, p. 652, § 12/HB 518; Ga. L. 2011, p. 355, §§ .1, 21/HB 269; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 96, § 1/HB 900; Ga. L. 2012, p. 112, §§ 1-3, 1-4/HB 872; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2012 amendments. — The first 2012 amendment, effective July 1, 2012, inserted ", including a trailer," in paragraphs (a)(1) and (a)(2); inserted "or trailer" in paragraph (a)(2) and subparagraph (a)(2)(A); in paragraph (a)(2), in the first sentence, inserted "or trailer is at least 12 model years old and" near the middle, and substituted ", if the vehicle was used as a motor vehicle, or \$1,700.00 or less if the vehicle was used as a trailer" for "and is at least 12 model years old"; inserted ", where applicable" in subparagraph (a)(2)(B); and added ", or \$1,700.00 or less if the vehicle is a trailer" at the end of division (a)(2)(E)(i) and in subpara-

graph (a)(2)(I). The second 2012 amendment, effective July 1, 2012, deleted "and" at the end of subparagraph (a)(2)(I); added subparagraph (a)(2)(J); redesignated former subparagraph (a)(2)(J) as present subparagraph (a)(2)(K); inserted "secondary metals recycler," throughout paragraph (a)(3); substituted "a secondary metals recycler, used motor vehicle parts dealer," for "either a used motor vehicle parts dealer" in the ending undesignated paragraph of subparagraph (a)(3)(C); and added subsection (j). See editor's note for applicability.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modern-

ize, and correct the Code, revised punctuation in the first sentence of paragraph (a)(2).

Cross references. — Record maintained by metals recycler when recycling motor vehicles, § 10-1-351. Further provisions regarding duty of scrap metal processors to deliver certificates of title to Department of Revenue, § 43-43-3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “of this Code section” was inserted following “subsection (a)” in subsection (b).

Pursuant to Code Section 28-9-5, in 1993, “canceled” was substituted for “cancelled” in two places in division (a)(2)(C)(iii) (now (a)(4)(C)(iii)) and a misspelling of “misdemeanor” was corrected in the second sentence of subsection (h).

Pursuant to Code Section 28-9-5, in 2004, “to a vehicle” was inserted following “certificate of title” in the second sentence of subsection (d).

Editor’s notes. — Ga. L. 2012, p. 112, § 4-1(a)/HB 872, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on or after July 1, 2012.

Ga. L. 2012, p. 112, § 4-2/HB 872, effective July 1, 2012, amended Ga. L. 2011, p. 355, § 21/HB 269 to remove the funding contingency for the amendment to paragraph (a)(3).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 238 (2012).

JUDICIAL DECISIONS

Constitutionality of requirement of sending title certificate to commissioner. — Requiring a person to send the Revenue Commissioner the certificate of title of a motor vehicle disposed of as wreckage or salvage does not constitute an illegal seizure of private property without just compensation in violation of the Fourth Amendment to the Constitution, since the only purportedly valuable property involved is the title certificate and such a quasi-public document does not constitute property within the protection of the constitutional provision. *McDonald v. State*, 222 Ga. 596, 151 S.E.2d 121 (1966).

“Rebuilt” vehicle title need not

have identifier. — There is no duty on the purchaser of a “rebuilt” vehicle to have the certificate of title marked with any identifier; that duty is on the purchaser of a “salvage” vehicle, i.e., one not yet rebuilt. *Bill Davidson Buick, Inc. v. Sims*, 187 Ga. App. 81, 369 S.E.2d 285 (1988).

Cited in *Barron v. State*, 109 Ga. App. 786, 137 S.E.2d 690 (1964); *Cole v. State*, 118 Ga. App. 228, 163 S.E.2d 250 (1968); *Martin v. State*, 160 Ga. App. 275, 287 S.E.2d 244 (1981); *Hubacher v. Volkswagen Cent., Inc.*, 164 Ga. App. 791, 298 S.E.2d 533 (1982); *Hall v. Rome Auto. Co.*, 181 Ga. App. 621, 353 S.E.2d 542 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Interest of insurance companies in salvage vehicles. — Insurance company acquires a beneficial interest to wrecked or salvage vehicles and is charged with the responsibility of turning in the certificate of title to the commissioner. 1967 Op. Att’y Gen. No. 67-256 (rendered under Ga. L. 1961, p. 68, prior to amendment by Ga. L. 1981, p. 644, §§ 2, 4).

Surrender of plates and registrations of salvage vehicles. — Owners and insurers are required to surrender to the commissioner the license plates and

registrations of vehicles which become salvage or total loss vehicles. 1997 Op. Att’y Gen. No. 97-24.

Transfer of salvage titles. — Licensed used motor vehicle parts dealer can transfer salvage titles without being licensed as a used motor vehicle dealer provided that such dealer complies with O.C.G.A. Ch. 3, T. 40 and the rules and regulations of the State Revenue Commissioner relating to salvage vehicles. 1998 Op. Att’y Gen. No. 98-14.

Possession of title to rebuilt vehicle

not prohibited. — That provision which makes it unlawful for a person to possess a certificate of title for a vehicle which has been sold or disposed of as salvage or wreckage applies only to those persons who acquire the vehicle when the vehicle is wreckage or salvage; a person who buys

the vehicle which was subject to the salvage provision after the vehicle has been repaired or rebuilt is not violating this provision by possessing the title. 1967 Op. Att'y Gen. No. 67-179 (rendered under Ga. L. 1961, p. 68, prior to amendment by Ga. L. 1981, p. 644, §§ 2, 4).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 101, 102. 61A C.J.S., Motor Vehicles, § 1759.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 19.

40-3-36.1. Designation of flood damaged or fire damaged vehicle on certificate of title.

For any salvage motor vehicle which, after inspection, it is determined that repair to an operable condition does not require replacement of two or more major component parts but it is determined that the damage to the vehicle is a result of flood or fire shall be designated as flood damaged or fire damaged by the commissioner and such designation shall be indicated on the face of the certificate of title for such vehicle. (Code 1981, § 40-3-36.1, enacted by Ga. L. 1993, p. 1260, § 8.)

40-3-37. Salvaged or rebuilt motor vehicles; inspections; fees; exemption of motorcycles; glider kits.

(a) As used in this Code section, the term:

(1) "Application for a certificate of title on a recovered stolen motor vehicle" means an application for a certificate of title for a motor vehicle for which an insurance company has paid a total loss claim, has obtained a title marked "unrecovered stolen motor vehicle," and which has subsequently been recovered.

(2) "Application for a certificate of title on a salvaged or rebuilt motor vehicle" means:

(A) An application for a certificate of title for a motor vehicle for which a current Georgia certificate of title is marked "salvage" pursuant to subsection (e) of Code Section 40-3-36 and which has been repaired;

(B) An application for a certificate of title for a motor vehicle for which a current out-of-state certificate of title is marked "salvage," "rebuilt," or "restored" or any similar such phrase; or

(C) An application for a certificate of title for a motor vehicle for which a current Georgia certificate of title is marked "salvage"

pursuant to subsection (e) of Code Section 40-3-36 and for which the transferee is anyone other than a licensee as defined in Code Section 43-47-2.

(b)(1) Upon receipt of an application for a certificate of title on a salvaged or rebuilt motor vehicle, the commissioner shall promptly conduct an initial inspection on each such motor vehicle prior to the issuance of a certificate of title for the motor vehicle. Upon receipt of an application for a certificate of title on a recovered stolen motor vehicle which has been stripped of:

- (A) Substantially all its interior parts;
- (B) Engine;
- (C) Transmission;
- (D) All doors;
- (E) Complete soft top assembly including roof mechanism;
- (F) Front clip assembly (fenders, hood, and bumper); or
- (G) Cab and bed of a pick-up truck,

the commissioner shall promptly conduct an initial inspection on each such motor vehicle prior to the issuance of a certificate of title for the motor vehicle. The initial inspection shall include, but shall not be limited to, verification of the vehicle identification number, verification of the bills of sale or title for the major components, verification in regard to rebuilt vehicles that the word "rebuilt" is permanently affixed as required by subsection (d) of this Code section, verification that the vehicle was rebuilt in the State of Georgia, and, if the vehicle has been repaired, verification that the motor vehicle conforms to all safety equipment standards required by law. The commissioner shall be authorized to charge a fee of \$100.00 for each initial inspection of each motor vehicle. In the event a motor vehicle fails an inspection, a fee of \$100.00 shall be charged for each subsequent reinspection. The commissioner may conduct any such initial inspection and any required reinspections even though the motor vehicle may have been previously inspected under this Code section.

(2) If, upon inspection under paragraph (1) of this subsection, it is determined that the motor vehicle is not in full compliance with the law, the commissioner shall refuse to issue a certificate of title until compliance is reached. The commissioner may order additional, corrective repairs to such vehicle as a condition of issuance of a certificate of title.

(c) All applications submitted pursuant to this Code section shall be accompanied by one or more photographs of the motor vehicle in its

salvaged condition before any repairs have been made to such vehicle, which photographs shall be used by the commissioner in his or her inspections of the vehicle pursuant to this Code section. Any person who rebuilds or repairs a salvage motor vehicle shall submit an application for a certificate of title and obtain an inspection of such vehicle prior to the painting of such vehicle.

(d)(1)(A) Upon inspection under subsection (b) of this Code section, if it is determined that the motor vehicle has been restored to an operable condition by the replacement of two or more major component parts, a certificate of title may be issued for such motor vehicle which shall contain the word "rebuilt" on its face in no larger than 12 point font. This requirement will indicate to all subsequent owners of the motor vehicle that such is a rebuilt motor vehicle. If any such inspection determines that the motor vehicle shall require the replacement of less than two major component parts in order to restore the motor vehicle to an operable condition, a certificate of title shall be issued for such motor vehicle which shall contain the word "rebuilt" on its face in such manner as the commissioner shall prescribe. This requirement will indicate to all subsequent owners of the motor vehicle that such is a rebuilt motor vehicle.

(B) If it is determined that the motor vehicle required or shall require the replacement of two or more major component parts in order to restore the motor vehicle to an operable condition, the department shall cause the word "rebuilt" to be affixed to said motor vehicle at the time of inspection by the commissioner. The word "rebuilt" shall be affixed in a clear and conspicuous manner to the door post or such other location as the commissioner may prescribe. The word "rebuilt" shall be stamped on a certificate and shall be affixed to the motor vehicle in such manner as the commissioner may prescribe. The requirement of this subparagraph shall only apply to motor vehicles restored after November 1, 1982.

(2) Upon inspection by the commissioner and compliance with paragraph (2) of subsection (b) of this Code section, if it is determined that the motor vehicle does not require the replacement of two or more major components or has not had two or more major components changed, a certificate of title shall be issued and shall contain the word "rebuilt" on its face.

(3) If, after the initial inspection, the commissioner determines that the damage is so extensive that returning such vehicle to a safe, operable condition is impossible, the salvage certificate shall be revoked and such vehicle may only be used for scrap or parts. A vehicle for which such a determination is made shall not be issued a

title under any circumstances or conditions including but not limited to obtaining of a surety bond.

(e) Any person, firm, or corporation that rebuilds or repairs a motor vehicle whose current certificate of title is marked "salvage" shall make application for and obtain a certificate of title as provided in this Code section prior to the sale or transfer of said motor vehicle. If, under the laws of any other state, a vehicle has been declared to be nonrebuildable, the commissioner shall not issue any certificate of title for such vehicle and the vehicle shall not be used for any purpose except parts.

(f)(1) Motorcycles which are over 25 years old shall be exempt from the salvage laws of this state.

(2) Motor vehicles which have been altered by the installation of a glider kit shall be issued a certificate of title containing the word "rebuilt." (Ga. L. 1981, p. 644, §§ 3, 4; Code 1981, § 40-3-35.1; Ga. L. 1982, p. 403, §§ 2, 4; Ga. L. 1982, p. 1676, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1985, p. 1227, § 2; Ga. L. 1987, p. 626, § 1; Code 1981, § 40-3-37, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, § 8; Ga. L. 1993, p. 91, § 40; Ga. L. 1993, p. 1260, § 9; Ga. L. 1998, p. 1179, § 36; Ga. L. 2004, p. 452, § 3; Ga. L. 2007, p. 635, § 3/HB 183; Ga. L. 2011, p. 752, § 40/HB 142.)

Cross references. — Labeling requirements for remanufactured or rebuilt items generally, § 10-1-80.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1988, the quotation mark preceding the word "term" was deleted and a quotation mark added preceding "application" in subsection (a).

JUDICIAL DECISIONS

Cited in *Bill Davidson Buick, Inc. v. Sims*, 187 Ga. App. 81, 369 S.E.2d 285 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Transfer of salvage titles. — Licensed used motor vehicle parts dealer can transfer salvage titles without being licensed as a used motor vehicle dealer provided that such dealer complies with

O.C.G.A. Ch. 3, T. 40 and the rules and regulations of the State Revenue Commissioner relating to salvage vehicles. 1998 Op. Att'y Gen. No. 98-14.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 96 et seq.

40-3-38. Fees.

(a) An application for a certificate of title shall be accompanied by the required fee when mailed or delivered to the commissioner or a designated agent.

(b) An application for the naming of a lienholder on a certificate of title shall be accompanied by the required fee when mailed or delivered to the commissioner or a designated agent.

(c) The commissioner shall be paid a fee of \$18.00 for the filing of an application for any certificate of title and for the filing of the notice of a security interest or a lien on vehicles not required by law to be titled in this state. The commissioner may, by appropriate regulation, provide for additional fees not to exceed \$18.00 for the special handling of applications for certificates of title and related documents. The commissioner shall be paid a fee of \$8.00 for the filing of an application for a replacement certificate of title. The fee for issuance of a replacement certificate of title shall be the same whether mailed or delivered to the commissioner or an agent.

(d) The above fees shall be required of all applicants except the State of Georgia and the United States of America. (Ga. L. 1961, p. 68, § 18; Ga. L. 1969, p. 92, §§ 2, 3; Ga. L. 1981, p. 883, § 8; Code 1981, § 40-3-36; Ga. L. 1984, p. 1194, § 2; Ga. L. 1985, p. 485, § 1; Code 1981, § 40-3-38, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 779, § 17; Ga. L. 1994, p. 1851, § 2.)

JUDICIAL DECISIONS

Fee not applicable to post-certificate transactions. — Clear language of O.C.G.A. § 40-3-38(c) states that the charge authorized is one for an application for a certificate of title. When there is merely a subsequent transaction affecting title to a motor vehicle, there is no need or basis for application for a certificate of title on the vehicle, only a

need to reflect the transaction on the already-existing certificate of title. Additionally, O.C.G.A. § 40-3-27 specifically addresses that situation and limits the fee to \$5.00. *Fryer v. Easy Money Title Pawn, Inc.*, 183 Bankr. 654 (Bankr. S.D. Ga. 1995).

Cited in *Johnsen v. Collins*, 875 F. Supp. 1571 (S.D. Ga. 1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 71. 66 Am. Jur. 2d, Records and Recording Laws, § 70.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 96 et seq., 307 et seq.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 17.

40-3-39. Compensation of tag agents; mailing of applications to department.

The commissioner is authorized to utilize the services of persons appointed as county tag agents under Code Section 40-2-23 and to allow such county tag agents to retain a fee therefor not in excess of 50¢ for each application handled, such fee to be disposed of as other tag fees retained by him or her as tag agent are disposed of in his or her county. Any applicant for a title shall have the right to mail the application directly to the department. (Ga. L. 1961, p. 68, § 18; Code 1981, § 40-3-37; Ga. L. 1985, p. 485, § 2; Code 1981, § 40-3-39, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 4-8.)

JUDICIAL DECISIONS

Cited in *Blakely & Son v. Humphreys*,
148 Ga. App. 281, 250 S.E.2d 826 (1978).

40-3-40. Reports and remittances by tag agents.

(a) All county tag agents accepting and handling title applications shall endeavor to submit such applications and related sums of money to which the department is entitled to the commissioner on a daily basis. All reports of title applications handled and related sums of money collected to which the department is entitled must be submitted to the commissioner within seven calendar days from the close of the business day during which such applications were handled and related sums of money collected.

(b) Funds received as a result of handling title applications shall be considered trust funds in the hands of the tag agents until such time as they are paid over to the commissioner.

(c) Failure to submit the reports or remit the funds within the seven-calendar-day period from the close of the business day as required by this Code section shall result in the penalties imposed by Code Section 48-2-44.

(d) Before the expiration of the time period within which a title report is required to be filed with the commissioner or funds remitted to the commissioner, application may be made to the commissioner for an extension. The commissioner is authorized, upon a showing of justifiable cause, to grant up to a ten-day extension from the deadline provided for the performance of the above duties. Only one such extension may be granted with regard to any reports or funds due the commissioner for a specific business day.

(e) Proof of mailing within the appropriate time period provided for in this Code section, as evidenced by a United States Postal Service

postmark, shall be prima-facie proof that the county tag agent has complied in a timely manner with his duties as enumerated by this Code section. (Ga. L. 1980, p. 1038, § 1; Code 1981, § 40-3-38; Ga. L. 1985, p. 149, § 40; Code 1981, § 40-3-40, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 2005, p. 60, § 40/HB 95; Ga. L. 2005, p. 334, § 15-2/HB 501.)

40-3-41. Suspension or revocation of certificates.

(a) The commissioner shall suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard in accordance with Code Section 40-3-6, when authorized by any other provision of law or if he finds:

(1) The certificate of title was fraudulently procured or erroneously issued; or

(2) The vehicle has been scrapped, dismantled, or destroyed.

(b) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

(c) When the commissioner suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the commissioner.

(d) The commissioner may seize and impound any certificate of title which has been suspended or revoked. (Ga. L. 1961, p. 68, § 28; Code 1981, § 40-3-39; Code 1981, § 40-3-41, as redesignated by Ga. L. 1990, p. 2048, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 98, 99.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 101, 102.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 26.

40-3-42. Postmark as proof of timely submission of documents; responsibility for collection of penalty for late submission.

In instances when an application for title is required to be submitted within a certain time period, proof of mailing within the designated period allowed for submission of the documents, as evidenced by a United States Postal Service postmark, shall be prima-facie proof that the application was timely submitted. Additionally, when the law provides for a penalty for the untimely submission of a title application, the responsibility for the collection of such penalty shall be that of the

department. (Ga. L. 1981, p. 883, § 3; Code 1981, § 40-3-40; Code 1981, § 40-3-42, as redesignated by Ga. L. 1990, p. 2048, § 3; Ga. L. 2000, p. 951, § 4-9.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles,
§ 96 et seq.

40-3-43. Transfer of certificate to person, firm, or corporation paying total loss claim on stolen vehicle; administrative fine enforcement alternative; authority of Commissioner of Insurance.

(a) Any person, firm, or corporation which pays a total loss claim on a vehicle as a result of such vehicle's being stolen shall within 15 days of the payment of such total loss claim apply to the commissioner for a transfer of the certificate of title into such person's, firm's, or corporation's name. No person, firm, or corporation shall sell, transfer, or convey such vehicle until the requirements of this Code section have been met.

(b) As an alternative to criminal or other civil enforcement, the commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant to this Code section, may issue an administrative fine not to exceed \$1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person has violated any provisions of this Code section or any regulations or orders promulgated under this Code section. The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this subsection shall be paid into the state treasury. The commissioner may file, in the superior court (1) wherein the person under order resides; (2) if such person is a corporation, in the county wherein the corporation maintains its principal place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and

all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this Code section or any order, rules, or regulations promulgated pursuant thereto.

(c) The Commissioner of Insurance is authorized to enforce the provisions of this Code section to the extent such provisions are applicable to insurers which are under the jurisdiction of the Insurance Department. The Commissioner of Insurance is also authorized to cooperate with the commissioner in enforcing this Code section and to provide the commissioner with any information acquired by the Commissioner of Insurance during any investigation or proceeding involving this Code section. Nothing in this subsection shall be construed to limit the powers and duties of the commissioner to enforce the provisions of this Code section as such provisions apply to insurers. (Code 1981, § 40-3-41, enacted by Ga. L. 1988, p. 1340, § 1; Code 1981, § 40-3-43, as redesignated by Ga. L. 1990, p. 2048, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “vehicle’s” was substituted for “vehicle” in the first sentence of subsection (a).

ARTICLE 3

SECURITY INTERESTS IN AND LIENS ON MOTOR VEHICLES

Cross references. — Secured transactions generally, T. 11, C. 9, A. 9. Sale or disposal of motor vehicle after giving bill of sale to secure debt or other security instrument, § 44-14-7.

40-3-50. Perfection of security interests generally.

(a) Except as provided in Code Sections 11-9-303, 11-9-316, and 11-9-337, the security interest in a vehicle of the type for which a certificate of title is required shall be perfected and shall be valid against subsequent creditors of the owner, subsequent transferees, and the holders of security interests and liens on the vehicle by compliance with this chapter.

(b)(1) A security interest is perfected by delivery to the commissioner or to the county tag agent of the county in which the seller is located, of the county in which the sale takes place, of the county in which the vehicle is delivered, or of the county wherein the vehicle owner resides, of the required fee and:

(A) The existing certificate of title, if any, and an application for a certificate of title containing the name and address of the holder of a security interest; or

(B) A notice of security interest on forms prescribed by the commissioner.

(2) The security interest is perfected as of the time of its creation if the initial delivery of the application or notice to the commissioner or local tag agent is completed within 30 days thereafter, regardless of any subsequent rejection of the application or notice for errors; otherwise, as of the date of the delivery to the commissioner or local tag agent. The local tag agent shall issue a receipt or other evidence of the date of filing of such application or notice. When the security interest is perfected as provided for in this subsection, it shall constitute notice to everybody of the security interest of the holder. (Ga. L. 1961, p. 68, § 21; Ga. L. 1962, p. 79, § 11; Ga. L. 1978, p. 1081, § 9; Ga. L. 1981, p. 883, § 9; Ga. L. 1990, p. 2048, § 3; Ga. L. 1994, p. 352, § 2; Ga. L. 1995, p. 809, § 14; Ga. L. 2000, p. 227, § 1; Ga. L. 2001, p. 362, § 32; Ga. L. 2011, p. 510, § 1/HB 323.)

Editor's notes. — Ga. L. 1994, p. 352, § 3, not codified by the General Assembly, provides: "The General Assembly declares that the enactment of Section 2 of this Act is a present clarification of the original intent of the General Assembly as to the method, manner, and time of perfection of a security interest in a motor vehicle."

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any lo-

cal law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act." The act became effective January 1, 1997.

Law reviews. — For comment on *Maley v. National Acceptance Co.*, 250 F. Supp. 841 (N.D. Ga. 1966), see 3 Ga. St. B.J. 248 (1966).

JUDICIAL DECISIONS

Purpose. — Legislature intended to provide a simple statutory lien procedure upon which those both financing and repairing motor vehicles could rely when conducting daily business. This statutory procedure did not engraft upon itself common law principles of accession or the complex and multi-faceted procedures of the UCC. *Barnes v. GMAC*, 191 Ga. App. 201, 381 S.E.2d 146 (1989).

Exception. — Trial court erred in concluding that the security interest holder had a valid, perfected security interest in the vehicle that the car buyer purchased; ordinarily, the holder's security interest would have been noted on the certificate of title issued to the buyer when the car was purchased, but the state motor vehicle department made a clerical error and did not include the security interest holder's security interest on the certificate of title; as a result, the buyer was able to purchase the car free of the security interest holder's security interest pursuant to O.C.G.A. § 11-9-337, which provided an exception to enforcement of a security interest pur-

suant to O.C.G.A. § 40-3-50 for people taking delivery of a good without knowledge of a security interest. *Metzger v. Americredit Fin. Svcs.*, 273 Ga. App. 453, 615 S.E.2d 120 (2005).

Creation of security interest matter of contract between parties. — Failure to comply with the Motor Vehicle Certificate of Title Act, (O.C.G.A. § 40-3-1 et seq.,) with respect to the perfection of a security interest does not affect the creation of the security interest which remains a matter of contract between the parties. *Spoon v. Herndon*, 167 Ga. App. 794, 307 S.E.2d 693 (1983).

While it appeared that O.C.G.A. § 9-3-24, rather than O.C.G.A. § 11-2-725, would most likely apply to defendant collection attorney's state court deficiency action against plaintiff consumer, and it was not for the federal court to say what the Georgia courts would hold, the uncertainty meant there was no intentional unfair conduct and the consumer's Fair Debt Collection Practices Act, 15 U.S.C. § 1692, claim was dis-

missed; other parts of the Georgia Code, such as O.C.G.A. §§ 10-1-36 and 40-3-50, and applicable case law indicated that Georgia's highest courts would most likely hold that the case fell within Ga. U.C.C. art. 9 and not Ga. U.C.C. art. 2. *Almand v. Reynolds & Robin, P.C.*, 485 F. Supp. 2d 1361 (M.D. Ga. 2007).

Chapter as sole means of perfection. — Only way to perfect security interest in motor vehicles is by filing under Ga. L. 1961, p. 68. *General Fin. Corp. v. Hester*, 141 Ga. App. 28, 232 S.E.2d 375 (1977); *Freeman v. Bentley*, 205 Ga. App. 409, 422 S.E.2d 435 (1992) (see O.C.G.A. Ch. 3, T. 40).

Failure to deliver documents. — O.C.G.A. § 40-3-50(b) does not provide that a security interest is void if the relevant documents are not delivered within 20 days, but states that if delivery is accomplished within 20 days, the perfection of the security interest will relate back to the time of the security's creation. *Perkins v. Gilbert*, 169 Bankr. 455 (Bankr. M.D. Ga. 1994).

Section inapplicable to automobile dealers. — Effect of Ga. L. 1962, p. 79, § 11 is that the only way to create security interests in automobiles is by the method provided in that section, which does not apply to or affect dealers holding automobiles for sale, which not only need not have certificate of title, but also pass to buyers in the ordinary course of trade free of the security interest. *Sun Ins. Office, Ltd. v. First Nat'l Bank & Trust Co.*, 113 Ga. App. 782, 149 S.E.2d 753, rev'd on other grounds, 222 Ga. 559, 150 S.E.2d 803 (1966) (see O.C.G.A. § 40-3-50).

Minor errors on application tolerated. — Application substantially complying with filing requirements is effective even though the application contains minor errors which are not seriously misleading. *Roberts v. International Harvester Credit Corp.*, 143 Ga. App. 206, 237 S.E.2d 697 (1977).

Application initially listing no security interest holder. — An application for a certificate of title initially listing no security interest holder is not covered by O.C.G.A. § 40-3-50. *Kelley v. Citizens Bank (In re Russell)*, 227 Bankr. 196 (Bankr. M.D. Ga. 1998).

Certificate of title superior to later asserted mechanics' lien. — When a certificate of title provided constructive notice to future debtors that the motor vehicle was encumbered by a security interest in favor of plaintiff, plaintiff's first security interest was superior to defendants' later asserted mechanics' lien. *Hull v. Transport Acceptance Corp.*, 177 Ga. App. 875, 341 S.E.2d 330 (1986).

Reapplication for certificates of title when new agreement is executed. — When lessee agreed to lease with an option to buy three tractors and, pursuant to subsection (b) of O.C.G.A. § 40-3-50, applied for certificates of title and thereby perfected security interests in the three tractors, but the parties subsequently executed an installment sales contract entitled a "Financing and Security Agreement," but the former lessee failed to reapply with the state revenue commissioner for certificates of title showing lessor rather than lessee as owner of the tractors under the new agreement, the former lessee was not in substantial compliance with the Georgia Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., and failed to perfect the lessee's security interest under the installment contract. *Load-It, Inc. v. GTE Leasing Corp.*, 72 Bankr. 13 (N.D. Ga. 1986).

Reapplication unnecessary. — Lessor under a lease intended as security can perfect the lessor's interest in a motor vehicle by applying for a certificate of title showing the lessor as owner, and when the parties' second agreement is identical to their first agreement, there is not such a change in their relationship as to require the lessor to reapply for a certificate of title showing the lessee, rather than the lessor as owner. *Levine v. Leasing Int'l, Inc. (In re Betts)*, 71 Bankr. 171 (Bankr. N.D. Ga. 1987).

Finance company had a perfected security interest in tractors and was not required under the Georgia Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., to reapply for new certificates of title after completion of a financing and security agreement since the certificates already on file listed the names and addresses of the interested parties and accurately designated the company as the

holder of the security interest. *GTE Leasing Corp. v. Load-It, Inc.*, 860 F.2d 393 (11th Cir. 1988).

Lapse between creation of interest and perfection. — Lapse of 48 days between the date a security interest was created and the date the certificate of title was perfected created an antecedent debt which was a recoverable preferential transfer under the Bankruptcy Code. *Mann v. GMAC (In re Harley)*, 41 Bankr. 276 (Bankr. N.D. Ga. 1984).

Bank's security interest survives owner's use of unregistered trade name. — Use of an unregistered trade name as the owner's name does not defeat a creditor's search for, and the giving of notice to the world of, the existence of the bank's security interest, and does not therefore invalidate the bank's security interest. *In re Firth*, 363 F. Supp. 369 (M.D. Ga. 1973).

Ga. L. 1961, p. 68 is notice statute, having the effect, when complied with, of imputing constructive notice to all who may subsequently acquire an interest in or lien against the property. *Franklin Fin. Co. v. Strother Ford, Inc.*, 110 Ga. App. 365, 138 S.E.2d 679 (1964) (see O.C.G.A. Ch. 3, T. 40).

Rights of innocent third-party purchasers. — Ga. L. 1962, p. 79, § 11 must not be construed as permitting retroactive validity against innocent third parties who have acquired rights for value. *First Nat'l Bank & Trust Co. v. Smithloff*, 119 Ga. App. 284, 167 S.E.2d 190 (1969) (see O.C.G.A. § 40-3-50).

Late-perfected security interest is not retroactively valid against an innocent third party who acquired the automobile for value. *General Fin. Corp. v. Hester*, 141 Ga. App. 28, 232 S.E.2d 375 (1977).

Under the UCC, O.C.G.A. §§ 11-9-302(3) (now see O.C.G.A. § 11-9-310), 40-3-20, and 40-3-50, the rights of the holder of an unperfected security interest in an automobile are subordinate to the rights of an innocent third party who acquires the automobile for value. A party who purchases a car from one who purchased the car at a judicial sale to satisfy a judgment against the owner's spouse is such an innocent party. *May v. Macioce*, 200 Ga. App. 542,

409 S.E.2d 45, cert. denied, 200 Ga. App. 896, 409 S.E.2d 45 (1991).

Trial court erred in concluding that the security interest holder had a valid, perfected security interest in the car buyer's vehicle that the holder could enforce against the buyer; while the security interest holder ordinarily would have had an enforceable security interest pursuant to O.C.G.A. § 40-3-50, regarding the perfection of security interests, the security interest in the car buyer's vehicle was not perfect and the buyer did not have constructive notice; the state motor vehicle department made a clerical error and did not list the security interest on the certificate of title issued to the buyer, and the buyer showed that a statutory exception existed that allowed the buyer to purchase the car free of the security interest. *Metzger v. Americredit Fin. Svcs.*, 273 Ga. App. 453, 615 S.E.2d 120 (2005).

Pawnbroker as used car dealer. — In order to perfect a security interest in a vehicle, a pawnbroker, as a used car dealer, must follow the requirements specified in O.C.G.A. § 40-3-50. *Cobb Ctr. Pawn & Jewelry Brokers, Inc. v. Gordon*, 242 Ga. App. 73, 529 S.E.2d 138 (2000).

When security interest perfected. — When bank forwarded the bank's application for the certificate of title in the truck to the State Revenue Commissioner, and the certificate of title was issued to the bank on November 7, 1990, the bank's purchase money security interest became perfected some time prior to the issuance of the certificate of title. *United States v. Specialty Contracting & Supply, Inc.*, 140 Bankr. 922 (Bankr. N.D. Ga. 1992).

Consequences of failure to perfect security interest within 20 days. — Creditor failed to deliver necessary documentation to the county motor vehicle licensing department within 20 days of the initial delivery of possession of the car to the debtor as required under O.C.G.A. § 40-3-50(b); therefore, the creditor's security interest in the vehicle could be set aside and recovered by the trustee along with any payments thereunder pursuant to 11 U.S.C. §§ 544(a) and 549. *Gordon v. Am. Honda Fin. Corp. (In re Vollmer)*, No. A03-81803-REB, 2005 Bankr. LEXIS 1623 (Bankr. N.D. Ga. July 7, 2005).

Creditor failed to deliver the necessary documentation to the county motor vehicle licensing department within 20 days of the initial delivery of possession of the car to the debtor as required under O.C.G.A. § 40-3-50(b), which precluded the creditor's reliance upon the affirmative defense of 11 U.S.C. § 547(c) to the trustee's avoidance action. *Gordon v. Am. Honda Fin. Corp.* (In re Vollmer), No. A03-81803-REB, 2005 Bankr. LEXIS 1623 (Bankr. N.D. Ga. July 7, 2005).

Security interest perfected in other state. — When creditor of car owner had a perfected security interest in the car, and the name of the creditor as the holder of a security interest was shown on an existing certificate of title issued by the jurisdiction where the car was located when the security interest attached, the creditor's security interest perfected in North Carolina continued perfected in Georgia, and was valid against subsequent transferees. *United Carolina Bank v. Sistrunk*, 158 Ga. App. 107, 279 S.E.2d 272 (1981).

Perfected security interest was constructive notice. — Lender's perfected security interest in a vehicle was constructive notice to the liability insurer of a third-party tortfeasor. *JCS Enter., Inc. v. Vanliner Ins.*, 227 Ga. App. 371, 489 S.E.2d 95 (1997).

Lease agreement mentioning ownership. — Lease agreement evidenced by a certificate of title in which the lessor was denominated the "owner," while containing no express identification of the "owner's" security interest, constituted a perfected security interest. *Load-It, Inc. v. VTCC, Inc.*, 774 F.2d 1077 (11th Cir. 1985).

When judicial liens subordinate to perfected security interest. — Judicial liens created either contemporaneously or after the creation of the security agreement are subordinate to the perfected security interest. *GMAC v. Busenlehner*, 918 F.2d 928 (11th Cir. 1990), cert. denied, 5 U.S. 949, 111 S. Ct. 2251, 114 L. Ed. 2d 492 (1991).

Motor crane operated by separate motor. — Security interest in motor cranes operated by separate motor of a truck is not properly perfected unless it is noted on the motor crane's certificate of

title. *Citizens & S. Nat'l Bank v. Georgia Steel, Inc.*, 25 Bankr. 796 (Bankr. M.D. Ga. 1982).

After-acquired parts and repairs. — Lender's properly perfected security interest in a vehicle extended to after-acquired parts and repairs, and was superior to a repair shop's mechanic's lien and claim for unjust enrichment regarding parts affixed to the vehicle. *Barnes v. GMAC*, 191 Ga. App. 201, 381 S.E.2d 146 (1989).

Permanently attached mobile home not "vehicle." — "Double-wide" mobile home unit which has become permanently attached to the land on which the mobile home is placed ceases to be a "vehicle" under the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., so that a security interest is obtained by recording a security deed to the land and the "improvements thereon" rather than placing a lien on the mobile home under the vehicle title act. *Walker v. Washington*, 837 F.2d 455 (11th Cir. 1988).

Since the resident failed to offer sufficient evidence that the mobile home was the resident's principal dwelling or that the mobile home was permanently affixed to real estate, or even that the resident had any ownership interest in the mobile home at the time of the loan application, a security interest was perfected under O.C.G.A. § 40-3-50. *Griswell v. Columbus Fin. Co.*, 220 Ga. App. 803, 470 S.E.2d 256 (1996).

Cited in *Green v. King Edward Employees' Fed. Credit Union*, 373 F.2d 613 (5th Cir. 1967); *Capital Auto. Co. v. Continental Credit Corp.*, 117 Ga. App. 451, 160 S.E.2d 836 (1968); *GMAC v. Whisnant*, 387 F.2d 774 (5th Cir. 1968); *First Nat'l Bank & Trust Co. v. McElmurray*, 120 Ga. App. 134, 169 S.E.2d 720 (1969); *Frank Jackson Motors, Inc. v. Mortgage Enters., Inc.*, 124 Ga. App. 798, 186 S.E.2d 464 (1971); *In re Thompson*, 349 F. Supp. 990 (M.D. Ga. 1972); *Cooper v. Citizens Bank*, 129 Ga. App. 261, 199 S.E.2d 369 (1973); *McMath v. Columbus Bank & Trust Co.*, 136 Ga. App. 723, 222 S.E.2d 177 (1975); *Rome Bank & Trust Co. v. Bradshaw*, 143 Ga. App. 152, 237 S.E.2d 612 (1977); *Szczepanski v. GMAC*, 558 F.2d 732 (5th Cir. 1977); *McClintock v. GMAC*, 240 Ga.

606, 241 S.E.2d 831 (1978); *McConnell v. Barrett*, 154 Ga. App. 767, 270 S.E.2d 13 (1980); *Harris v. Ford Motor Credit Co.* (In re Smith), 7 Bankr. 574 (Bankr. M.D. Ga. 1980); *Flatau v. Bank of Banks County* (In re Stewart), 9 Bankr. 32 (Bankr. M.D. Ga. 1980); *Turner v. Jackson*, 157 Ga. App. 31,

276 S.E.2d 92 (1981); *Tidwell v. Chrysler Credit Corp.* (In re Blackburn), 90 Bankr. 569 (Bankr. M.D. Ga. 1987); *SunTrust Bank v. Atlanta Classic Cars, Inc.*, 249 Ga. App. 726, 549 S.E.2d 523 (2001); *Shepard v. State of Ga.*, 267 Ga. App. 604, 600 S.E.2d 691 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Debtor's signature. — Debtor is not required to sign the notice of lien or security interest filed under Ga. L. 1961, p. 68. 1967 Op. Att'y Gen. No. 67-48 (see O.C.G.A. Ch. 3, T. 40).

Substitution of vehicles in contract. — Holder of a purchase money security interest in a certain vehicle may not substitute a different vehicle in the contract and have the date of perfection of the security interest in the substituted collateral relate back to the date the security interest in the first vehicle was perfected. 1983 Op. Att'y Gen. No. 83-3.

Security interest not subject to prior judgment lien. — Filing of an execution issued on a judgment on the general execution docket does not afford notice to a subsequent security interest holder in a motor vehicle and the security interest holder's lien is not subject to the prior judgment lien. 1968 Op. Att'y Gen. No. 68-95.

Used car dealers. — In order to perfect a dealer's security interest in a vehicle, a used car dealer must follow the

requirements specified in O.C.G.A. Ch. 3, T. 40; the method for perfecting a security interest as described in that chapter is exclusive, and such security interests in motor vehicles as to which certificates of title must be obtained are exempt from the provisions of law which otherwise require or relate to the recording or filing of security interests. 1990 Op. Att'y Gen. No. 90-8.

Used car dealer who has a security interest in a vehicle may exercise all rights afforded to the dealer by the security agreement including repossession, despite not having perfected the dealer's security interest. 1990 Op. Att'y Gen. No. 90-8.

Manufactured homes. — In order for liens or security interests in manufactured homes to be valid against subsequent creditors of the owner, subsequent transferees and subsequent security interests and liens, the lien or security interest must be perfected in accordance with the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq. 2000 Op. Att'y Gen. No. 2000-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 36, 37, 45, 56.

C.J.S. — 60 C.J.S., Motor Vehicles, § 103 et seq. 72 C.J.S., Pledges, § 13. 78 C.J.S., Sales, § 576 et seq.

40-3-51. Creation of security interest by owner.

If the owner creates a security interest in a vehicle:

(1) The owner shall immediately execute the application in the space provided therefor on the certificate of title or on a separate form that the commissioner prescribes, naming the holder of the security interest on the certificate and showing the name and address of the security interest holder, and shall cause the certificate, the applica-

tion, and the required fee to be delivered to the security interest holder;

(2) The security interest holder shall immediately cause the certificate of title and application and the required fee to be mailed or delivered to the commissioner or the commissioner's appropriate authorized county tag agent within 30 days of the date of creation of the security interest or lien. If the certificate of title and application and the required fee are not mailed or delivered within such time, the lien or security interest holder shall be required to pay a \$10.00 penalty in addition to the ordinary title fee provided for by this chapter. If the documents submitted in support of the title application are rejected, the party submitting the documents shall have 60 days from the date of initial rejection to resubmit the documents required by the commissioner or the authorized county tag agent for the issuance of title. If the documents are not properly resubmitted within the 60 day period, there shall be an additional \$10.00 penalty assessed, and the owner of the vehicle shall be required to remove immediately the license plate of the vehicle and return same to the commissioner or authorized county tag agent. The license plate shall be deemed to have expired at 12:00 Midnight of the sixtieth day following the initial rejection of the documents, if the documents have not been resubmitted as required under this paragraph; and

(3) Upon receipt of the certificate of title, the application, and the required fee, the commissioner or the commissioner's duly authorized county tag agent shall issue a new certificate containing the name and address of the holder of the security interest and of holders of previous unreleased security interests and liens, if any, and shall mail the certificate to the first holder on it. If more than one holder is named on the certificate, the first holder shall comply with subsection (b) of Code Section 40-3-26 in regard to notifying other holders of the content of the certificate. (Ga. L. 1961, p. 68, § 22; Ga. L. 1962, p. 79, § 12; Ga. L. 1964, p. 436, § 4; Ga. L. 1965, p. 304, § 6; Ga. L. 1969, p. 92, § 5; Ga. L. 1981, p. 883, § 11; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 19; Ga. L. 2008, p. 835, § 7/SB 437.)

JUDICIAL DECISIONS

Chapter as sole means of perfection. — Only way to perfect security interest in motor vehicles is by filing under Ga. L. 1961, p. 68. *General Fin. Corp. v. Hester*, 141 Ga. App. 28, 232 S.E.2d 375 (1977) (see O.C.G.A. Ch. 3, T. 40).

Penalty for failure to deliver documents. — O.C.G.A. § 40-3-51 does not purport to void a security interest if deliv-

ery of the certificate of title is not made within the prescribed time, but merely sets forth a ten dollar (\$10.00) penalty for delivery of relevant documents to the commissioner if not completed in a timely fashion. *Perkins v. Gilbert*, 169 Bankr. 455 (Bankr. M.D. Ga. 1994).

Retroactivity of late-perfected security interest. — Late-perfected secu-

urity interest is not retroactively valid against an innocent third party who acquired the automobile for value. *General Fin. Corp. v. Hester*, 141 Ga. App. 28, 232 S.E.2d 375 (1977).

No obligation to perfect security interest. — Credit union which loaned money to a borrower to purchase a van had no obligation to perfect a security interest therein. The borrower never received or took title to the van which was to be security for the loan and, thus, although the credit union could have perfected a security interest by delivering the title to the revenue commissioner, it could do so only after the security interest was created by submitting a title application pursuant to O.C.G.A. § 40-3-51. *Hairston v. Savannah River Plant Fed. Credit Union*, 216 Ga. App. 246, 453 S.E.2d 811 (1995).

Security interest without perfect-

ing interest on certificate of title. — Although an application for certificate of title pursuant to O.C.G.A. § 40-3-51 is the exclusive means of perfecting a lien in a motor vehicle, a party may have a security interest in a vehicle without having perfected that interest on the certificate of title. *In re Dukes*, 213 Bankr. 202 (Bankr. S.D. Ga. 1997).

Cited in *Peoples, Inc. v. DeVane*, 114 Ga. App. 597, 152 S.E.2d 649 (1966); *Wooden v. Michigan Nat'l Bank*, 117 Ga. App. 852, 162 S.E.2d 222 (1968); *Frank Jackson Motors, Inc. v. Mortgage Enters., Inc.*, 124 Ga. App. 798, 186 S.E.2d 464 (1971); *McMath v. Columbus Bank & Trust Co.*, 136 Ga. App. 723, 222 S.E.2d 177 (1975); *Gwinnett Sales & Serv. v. Trust Co.*, 130 Ga. App. 31, 202 S.E.2d 255 (1976); *May v. Macioce*, 191 Ga. App. 491, 382 S.E.2d 198 (1989); *May v. Macioce*, 200 Ga. App. 542, 409 S.E.2d 45 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Receipt of application or notice of lien in commissioner's records. — Department of Revenue's (now commissioner's) records show when an application or notice of lien is received under Ga. L. 1961, p. 68 for use in determining relative priority of security interest. 1962 Op. Att'y Gen. p. 310 (see O.C.G.A. Ch. 3, T. 40).

Correction of title certificate. — If title certificate is incorrect, it should be returned to commissioner and the owner notified by the security interest holder that the holder has received the certifi-

cate, that it contained an error, and that the holder has returned the certificate to the commissioner; the commissioner will issue a correct certificate of title if such seems to be required under the circumstances. 1962 Op. Att'y Gen. p. 311.

Used car dealers. — Failure of a used car dealer to be listed on the certificate of title as an owner or security interest holder does not affect the creation of the security interest and all the rights attached thereto, including repossession. 1990 Op. Att'y Gen. No. 90-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 36, 37, 56. 51 Am. Jur. 2d, Liens, § 16.

C.J.S. — 60 C.J.S., Motor Vehicles, § 103 et seq. 72 C.J.S., Pledges, § 13. 78A C.J.S., Sales, § 807 et seq.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) §§ 20, 21.

ALR. — Lien for repairs to or services in connection with automobile, 62 ALR 1485.

40-3-52. Perfection of second or subsequent security interests.

(a) If the owner of a motor vehicle desires to place a second or subsequent security interest against the vehicle and the certificate of title on that vehicle is being held by a security interest holder or lienholder, the owner shall, on the form prescribed by the commissioner,

execute a title application and a notice of the second or subsequent security interest; and the holder of the second or subsequent security interest shall forward such notice and title application, together with a fee as provided by Code Section 40-3-38, by certified mail or statutory overnight delivery, return receipt requested, to the first holder of a security interest or lien who has custody of the certificate of title. The notice of such second or subsequent security interest shall contain on its face instructions to the security interest holder or lienholder having custody of the certificate of title directing such custodial security interest holder or lienholder within ten days to forward the notice, title application, and fee, together with the certificate of title, to the commissioner or the commissioner's duly authorized county tag agent in order that the commissioner or authorized county tag agent may issue a new certificate of title and reflect on the certificate of title the subsequent security interest. The first security interest holder or lienholder having possession of the certificate of title shall comply with the instructions contained in the notice. The commissioner or authorized county tag agent, upon receipt of a properly executed application notice, the fee, and the original certificate of title, shall enter the subsequent security interest on such commissioner's or authorized county tag agent's records and shall issue a new certificate of title and shall then deliver the certificate of title as provided for in this chapter.

(b) If the holder of the second or subsequent security interest forwards by registered or certified mail or statutory overnight delivery the title application, notice of the second or subsequent security interest, and fee to the first security interest holder or lienholder who has custody of the certificate of title within ten days of the execution of that second or subsequent security interest, it shall be perfected as of the date it was executed; otherwise, as of the date the notice was forwarded to the first security interest holder or lienholder holding the certificate of title. The second or subsequent security interest holder shall retain the return registered or certified mail or statutory overnight delivery receipt as proof of perfection of his security interest under this Code section.

(c) In the event the first security interest holder or lienholder holding the certificate of the title fails, refuses, or neglects to forward the title application, notice, fee, and original certificate of title to the commissioner or the commissioner's duly authorized county tag agent as required by this Code section, the holder of the second or subsequent security interest may, on a form prescribed by the commissioner, make direct application to the commissioner or authorized county tag agent. Such direct application to the commissioner or authorized county tag agent shall have attached to it the return registered or certified mail or statutory overnight delivery receipt showing the previous mailing of the title application, fee, and notice to the first security interest holder or

lienholder. Upon receipt of such a direct application, the commissioner or authorized county tag agent shall order the first security interest holder or lienholder having custody of the certificate of title to forward the certificate of title to the commissioner or the authorized county tag agent for the purpose of having the second or subsequent security interest entered and a new certificate of title issued. If after a direct application of the commissioner or authorized county tag agent and the order of the commissioner or authorized county tag agent the first security interest holder or lienholder continues to fail, refuse, or neglect to forward the certificate of title as provided in this Code section, the commissioner or authorized county tag agent may cancel the outstanding certificate of title and issue a new certificate of title reflecting all security interests and liens, including the second or subsequent security interest, and this new certificate of title shall be delivered as provided for in this chapter.

(d) As an alternative to mailing notices concerning a second or subsequent security interest to the commissioner or the commissioner's duly authorized county tag agent in accordance with this Code section, the commissioner shall be authorized to permit the transaction to be made by electronic means in accordance with regulations promulgated by the commissioner.

(e) No first security interest holder or lienholder having possession of the certificate of title shall have the validity of that security interest or lien affected by surrendering the certificate of title as provided for by this Code section. (Ga. L. 1965, p. 304, § 5; Ga. L. 1978, p. 1081, § 9; Ga. L. 1981, p. 883, § 10; Ga. L. 1982, p. 3, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 20; Ga. L. 1998, p. 1179, § 37; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this

Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Security interest perfected in other jurisdiction. — If a vehicle is subject to a security interest when brought into Georgia, and the name of the holder of the security interest is shown on an existing certificate of title issued by the jurisdiction where the vehicle was when the security interest attached, the security interest continues perfected in Georgia and is valid against subsequent transferees of the vehicle. *Strother Ford, Inc. v. First Nat'l Bank*, 132 Ga. App. 268, 208 S.E.2d 25 (1974).

Cited in *Green v. King Edward Employees' Fed. Credit Union*, 373 F.2d 613 (5th Cir. 1967); *Capital Auto. Co. v. Continental Credit Corp.*, 117 Ga. App. 451, 160 S.E.2d 836 (1968); *Kinder v. GMAC*, 117 Ga. App. 610, 161 S.E.2d 372 (1968); *GMAC v. Whisnant*, 387 F.2d 774 (5th Cir. 1968); *First Nat'l Bank & Trust Co. v. McElmurray*, 120 Ga. App. 134, 169 S.E.2d 720 (1969); *Frank Jackson Motors, Inc. v. Mortgage Enters., Inc.*, 124 Ga. App. 798, 186 S.E.2d 464 (1971); *In re Thompson*, 349 F. Supp. 990 (M.D. Ga.

1972); *Cooper v. Citizens Bank*, 129 Ga. App. 261, 199 S.E.2d 369 (1973); *Szczepanski v. GMAC*, 558 F.2d 732 (5th Cir. 1977); *McClintock v. GMAC*, 240 Ga. 606, 241 S.E.2d 831 (1978); *McConnell v.*

Barrett, 154 Ga. App. 767, 270 S.E.2d 13 (1980); *Turner v. Jackson*, 157 Ga. App. 31, 276 S.E.2d 92 (1981); *United Carolina Bank v. Capital Auto. Co.*, 163 Ga. App. 796, 294 S.E.2d 661 (1982).

RESEARCH REFERENCES

ALR. — Automobiles: priorities as between vendor's lien and subsequent title or security interest obtained in another

state to which vehicle was removed, 42 ALR3d 1168.

40-3-53. Perfection and enforcement of liens generally.

(a) If the holder of any lien as defined in paragraph (7) of Code Section 40-3-2, except the holder of a mechanic's lien, perfection of which is prescribed in Code Section 40-3-54, desires to perfect such lien against a vehicle, the lienholder shall, on the form prescribed by the commissioner, execute a title application and a notice of lien stating the type of lien and the specific vehicle against which the lien is claimed and shall forward such notice and title application, together with a fee as provided by Code Section 40-3-38, either personally or by certified mail or statutory overnight delivery, return receipt requested, to the person who has custody of the current certificate of title at the address shown on such certificate of title. If someone other than the owner is holding the certificate of title, a copy of the notice shall also be forwarded to the owner. The lien claimant shall retain the certified mail or statutory overnight delivery receipt as proof of compliance with this Code section.

(b) After receipt of the notice of lien, as specified in this Code section, neither the owner nor any other person shall take any action affecting the title other than as provided in this Code section. After receipt of the notice of lien, the person holding the certificate of title shall hold the notice of lien and attachments and the title for ten days. If, during the ten-day period following receipt of the notice, the claimed lien is satisfied, the lien claimant shall, on the form prescribed by the commissioner, notify the owner and the person holding the certificate of title of such satisfaction. The notice of satisfaction shall serve as a release and withdrawal of the pending notice of lien. If the owner or person holding the certificate of title chooses to contest the claimed lien, such owner or person holding the certificate of title shall so indicate on the notice of lien form and shall notify the other interested parties. If the notice contesting the lien is given, or if ten days have elapsed without the lien being satisfied, the person holding the certificate of title shall forward the certificate of title together with the notice of lien and attachments thereto to the commissioner or the commissioner's duly authorized county tag agent in order that the commissioner or

authorized county tag agent may issue a new certificate of title and reflect on the new certificate of title the lien on the vehicle. The owner or the person who has custody of the current certificate of title shall comply with the instructions contained in the notice, and in the event such owner or person having custody of the current title cannot do so such owner or person having custody of the current title shall notify the lien claimant. The commissioner or authorized county tag agent, upon receipt of a properly executed title application, notice, fee, and the current certificate of title, shall enter the lien on the commissioner's or authorized county tag agent's records and shall issue a new certificate of title reflecting the lien and shall then deliver the certificate of title as provided for in this chapter. The lien shall be perfected at the time the lien notice, application for title, fee, and current certificate of title are received by the commissioner or authorized county tag agent.

(c) In the event that the person who has custody of the current certificate of title fails, refuses, or neglects to forward the title application, notice, fee, and current certificate of title to the commissioner or the commissioner's duly authorized county tag agent as required in this Code section, the lien claimant may, if such lien claimant's lien has not been satisfied, on a form prescribed by the commissioner, make direct application to the commissioner or authorized county tag agent. Such direct application to the commissioner or authorized county tag agent shall have attached to it the return registered or certified mail or statutory overnight delivery receipt showing the previous mailing of the title application, fee, and notice to the person who has custody of the current certificate of title. Upon receipt of such a direct application, the commissioner or authorized county tag agent shall order the person who has custody of the current certificate of title to forward the certificate of title to the commissioner or authorized county tag agent for the purpose of having the lien entered and a new certificate of title reflecting the lien issued. If, after a direct application to the commissioner or authorized county tag agent and after the order of the commissioner or authorized county tag agent, the person who has custody of the current certificate of title continues to fail, refuse, or neglect to forward the certificate of title as provided in this Code section, the commissioner or authorized county tag agent may cancel the current certificate of title and issue a new certificate of title reflecting all security interests and liens, and this new certificate of title shall be delivered as provided for in this chapter. In the event a direct application is made, the lien shall be perfected as of the date the outstanding certificate of title is canceled.

(d) No security interest holder or lienholder having custody of the certificate of title shall have the validity of such security interest holder's or lienholder's security interest or lien affected by surrendering the certificate of title as provided by this Code section. The first security

interest holder or lienholder shall have the responsibility to advise a prospective transferee or security interest holder, upon inquiry, that a notice of subsequent lien has been received. Upon the issuing of a new certificate of title, the commissioner or the commissioner's duly authorized county tag agent shall cancel the old certificate of title.

(e) A lien perfected under this Code section shall be a lien only against the specific vehicle identified in the application for a new certificate.

(f) A lien on a vehicle for which a certificate of title is required shall be perfected and shall be valid against subsequent transferees and holders of security interests and liens only by compliance with this Code section. The procedure contained in this chapter shall be the exclusive method for the perfection of liens on vehicles, and no lien shall be effective as to a vehicle unless so perfected. (Ga. L. 1961, p. 68, § 21; Ga. L. 1962, p. 79, § 11; Ga. L. 1969, p. 92, § 4; Ga. L. 1978, p. 1081, § 9; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 21; Ga. L. 1998, p. 1179, § 38; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Liens generally, § 44-14-320 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, in subsection (b), a comma was inserted following "notice of lien" in the first and second sentences and following "fee" in the next-to-last sentence.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Actual notice of prior lien preserves priority. — Although the holder of a security interest may fail to comply with the provisions relating to the perfection of a security interest, it is well settled that actual notice of the prior lien to one who subsequently purchases or acquires a security interest is sufficient to preserve the priority of the lien or of the title. *Hopkins v. Kemp Motor Sales, Inc.*, 139 Ga. App. 471, 228 S.E.2d 607 (1976).

Priorities as between lenders. — When two lenders hold security agreements in the same property, and when, at the time of the second loan, the first lender's interest in the property was not perfected and the second lender had the opportunity to present the original certificate of title with a proper application to the commissioner to protect its status and obtain a first lien under Ga. L. 1978, p. 108, § 9 (see O.C.G.A. § 40-3-53) but did

not, and thereafter the first lender perfected that lender's security interest, the first lender's interest is superior to that of the second lender. *Gwinnett Com. Bank v. Citizens & S. Bank*, 152 Ga. App. 137, 262 S.E.2d 453 (1979).

Sufficiency of evidence. — Evidence found insufficient to direct verdict for lienholder, or to grant motion for new trial. *GMAC v. Miller*, 138 Ga. App. 140, 225 S.E.2d 728 (1976).

Noncomplying claimant not legally foreclosed from pursuing claim. — Claimant who has failed to record claimant's lien or otherwise make it known that one claims an interest in the property may have hard sledding when it comes to convincing the trier of fact, but the claimant is not as a matter of law foreclosed from pursuing the claim. *State v. Hallman*, 149 Ga. App. 221, 253 S.E.2d 859 (1979).

Reliance on filing of judgment on

general execution docket. — When a creditor fails to follow O.C.G.A. § 40-3-53 in perfecting a lien on a motor vehicle, relying instead on the filing of a judgment on the general execution docket and resulting judgment lien, the creditor's judgment lien does not attach to the subject vehicle and the vehicle is not encumbered by the lien. The reasoning of the court in a prior decision was not properly construed or extended as precedent for the implication that a judgment lien properly perfected under state law against a motor vehicle was thereby immune from avoidance under 11 U.S.C. § 522(f) if the conditions of that provision were shown to be satisfied; in fact, once the lien was shown to have attached and been perfected, the analysis under § 522(f) concerned precisely the avoidance of such an otherwise valid and perfected lien to the extent it impaired an exemption to which a debtor was entitled. *First Fin. Servs. v. Tallant* (In re Tallant), No. G11-23362-REB, 2012 Bankr. LEXIS 2454 (Bankr. N.D. Ga. Apr. 4, 2012).

Trustee in bankruptcy. — Trustee in bankruptcy was not required to demonstrate the trustee's ability to comply with the statute in order to gain the trustee's status as a hypothetical perfected lien

holder under § 544 of the Bankruptcy Code; the trustee gained the trustee's status as a perfected lien creditor as of the date of filing regardless of what other requirements state law provided for perfecting judgment liens. *Kelley v. Citizens Bank* (In re Russell), 227 Bankr. 196 (Bankr. M.D. Ga. 1998).

Cited in *Green v. King Edward Employees' Fed. Credit Union*, 373 F.2d 613 (5th Cir. 1967); *Capital Auto. Co. v. Continental Credit Corp.*, 117 Ga. App. 451, 160 S.E.2d 836 (1968); *GMAC v. Whisnant*, 387 F.2d 774 (5th Cir. 1968); *First Nat'l Bank & Trust Co. v. McElmurray*, 120 Ga. App. 134, 169 S.E.2d 720 (1969); *Frank Jackson Motors, Inc. v. Mortgage Enters., Inc.*, 124 Ga. App. 798, 186 S.E.2d 464 (1971); *In re Thompson*, 349 F. Supp. 990 (M.D. Ga. 1972); *Cooper v. Citizens Bank*, 129 Ga. App. 261, 199 S.E.2d 369 (1973); *Szczepanski v. GMAC*, 558 F.2d 732 (5th Cir. 1977); *McClintock v. GMAC*, 240 Ga. 606, 241 S.E.2d 831 (1978); *Canal Ins. Co. v. P & J Truck Lines*, 145 Ga. App. 545, 244 S.E.2d 81 (1978); *McConnell v. Barrett*, 154 Ga. App. 767, 270 S.E.2d 13 (1980); *Turner v. Jackson*, 157 Ga. App. 31, 276 S.E.2d 92 (1981); *Williamson v. Lucas*, 78 Bankr. 372 (Bankr. M.D. Ga. 1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Liens, § 22 et seq.

40-3-54. Mechanics' liens; how asserted and foreclosed.

(a) All mechanics of every sort shall have a special lien on any vehicle required to have a certificate of title by Code Section 40-3-20 for work done, or for work done and materials furnished, or for materials furnished in repairing or servicing such vehicle. Perfection of the lien by recording shall be as provided in Code Section 40-3-53. The lien may be asserted by retention of the vehicle, and all contracts for repairs or service to vehicles shall be deemed to incorporate a right of retention by the mechanic to protect this lien until it is paid or satisfied through foreclosure as provided in this Code section. The lien may also be asserted by surrendering the vehicle, giving credit, and foreclosing the lien claim in the manner provided in this Code section. If he surrenders possession of the vehicle to the debtor, the mechanic shall record his claim of lien as provided in Code Section 40-3-53. Such special lien shall

be superior to all liens except for taxes and such other liens and security interests of which the mechanic had actual or constructive notice before the work was done or material furnished. The validity of the lien against third parties shall be determined in accordance with this chapter.

(b) If possession is retained or the lien recorded, the owner-debtor may contest the validity of the amount claimed to be due by making written demand upon the lienholder. If upon receipt of such demand the lienholder fails to institute foreclosure proceedings within ten days where possession has been retained, or within 30 days where possession has been surrendered, the lien is forfeited.

(c) The lien shall be foreclosed in the following manner:

(1) A person asserting the lien, either for himself or as a guardian, administrator, executor, or trustee, may move to foreclose it by making an affidavit to a court of competent jurisdiction showing all the facts necessary to constitute a lien under this Code section and the amount claimed to be due;

(2) Upon such affidavit being filed, the clerk or a judge of the court shall serve notice upon the owner, the recorded lienholders and security interest holders, and the lessee, if any, of the vehicle of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists, and that such hearing must be petitioned for within five days after receipt of the notice and that, if no petition for such hearing is filed within the time allowed, the lien will conclusively be deemed a valid one and foreclosure thereof allowed;

(3) If a petition for a hearing is filed within the time allowed, the court shall set a probable cause hearing within ten days of the filing of the petition. If, at the probable cause hearing, the court determines that reasonable cause exists to believe that a valid debt exists, the mechanic shall be given possession of the vehicle or the court shall obtain possession of the vehicle, as ordered by the court. The owner-debtor may retain possession of the vehicle by giving bond and security in the amount determined to be probably due and the costs of the action;

(4) Within five days of the probable cause hearing, a defendant must petition the court for a full hearing on the validity of the debt if a further determination of the validity of the debt is desired. If no such petition is filed, the lien on the amount determined reasonably due shall be conclusively deemed a valid one and foreclosure thereof allowed. If such a petition is filed, the court shall set a full hearing thereon within 30 days of the filing of the petition. Upon the filing of such petition by the defendant, neither the prosecuting mechanic nor the court may sell the vehicle, although possession of the vehicle may be retained;

(5) If, after a full hearing, the court finds that a valid debt exists, then the court shall authorize foreclosure upon and sale of the vehicle subject to the lien to satisfy the debt if the debt is not otherwise immediately paid;

(6) If the court finds the actions of the mechanic in retaining or seeking possession of the vehicle were not taken in good faith, the court, in its discretion, may award damages to the owner, the lessee, or any person deprived of the rightful use of the vehicle due to the deprivation of the use of the vehicle;

(7) Any proceeding to foreclose a mechanic's lien on a vehicle must be instituted within one year from the time the lien is recorded or is asserted by retention. (Ga. L. 1961, p. 68, § 23; Ga. L. 1962, p. 79, § 13; Ga. L. 1969, p. 92, § 6; Ga. L. 1975, p. 489, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3.)

Cross references. — Special liens of mechanics and materialmen on personal property for work done and material furnished, § 44-14-363.

Law reviews. — For article surveying developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981).

JUDICIAL DECISIONS

Purpose of section. — Evident purpose of O.C.G.A. § 40-3-54 is to ensure a prompt resolution of disputes regarding the validity of mechanic liens' as well as to provide for prompt enforcement of those liens which are determined to be valid. *Carpet Transp., Inc. v. Fisher*, 166 Ga. App. 450, 304 S.E.2d 540 (1983).

Former provision unconstitutional. — Former portion of Ga. L. 1969, p. 92, § 6 (see O.C.G.A. § 40-3-54) this section which provided that a foreclosure on mechanics' liens must be in the manner provided by former Code 1933, § 67-2401 was unconstitutional. *Mason v. Garis*, 360 F. Supp. 420 (N.D. Ga. 1973), clarified, 364 F. Supp. 452 (N.D. Ga. 1973).

Period for filing petition. — O.C.G.A. § 40-3-54 requires that a petition be made within five days of a hearing and makes no provision for the late filing of a petition after receipt of a delayed ruling. Whatever period of time a hearing might encompass, it does not include that period of time after all evidence has been introduced when the trial judge has taken the litigated issues under advisement. *First Nat'l Bank v. Strother Ford, Inc.*, 188 Ga. App. 749, 374 S.E.2d 203 (1988).

Vehicles required to have certificates of title to establish mechanic's lien. — Vehicles referred to in Ga. L. 1962, p. 79, § 13 as being subject to mechanics liens are those which are required to have certificates of title, and those not subject to being retained by a mechanic are those exempt from those provisions by O.C.G.A. § 40-3-4. *Peoples, Inc. v. DeVane*, 114 Ga. App. 597, 152 S.E.2d 649 (1966) (see O.C.G.A. § 40-3-54).

Towing and estimate charges were not for "repairing or servicing" a vehicle within the meaning of O.C.G.A. § 40-3-54. *Southern Gen. Ins. Co. v. Auto Transformation, Inc.*, 206 Ga. App. 243, 424 S.E.2d 883 (1992).

Towing a vehicle and preparing an estimate of repair costs may not be considered work done or materials furnished in repairing or servicing a vehicle; the operator of a towing service was not entitled to a lien on a vehicle for towing and storage fees. *Purser Truck Sales, Inc. v. Horton*, 276 Ga. App. 17, 622 S.E.2d 405 (2005).

Granting vehicle's possession to security interest holder without paying repairman. — When a repairman has a valid possessory lien for work done and

materials furnished under Ga. L. 1975, p. 489, § 1 (see O.C.G.A. § 40-3-54), it is illegal to grant possession of the vehicle to the security interest holder without payment of the amount due the repairman; but the repairman may lose priority if the repairman knew of the security interest at the time the materials were furnished. *Atlanta Truck Serv., Inc. v. Associates Com. Corp.*, 146 Ga. App. 170, 246 S.E.2d 2 (1978).

Priority of security interest on certificate of title. — When a certificate of title provided constructive notice to future debtors that the motor vehicle was encumbered by a security interest in favor of plaintiff, plaintiff's first security interest was superior to defendants' later asserted mechanics' lien. *Hull v. Transport Acceptance Corp.*, 177 Ga. App. 875, 341 S.E.2d 330 (1986); *First Nat'l Bank v. Alvin Worley & Sons*, 221 Ga. App. 820, 472 S.E.2d 568 (1996).

Trial court erred by holding that defendant's mechanic's lien was superior to bank's perfected security interest in motor home where the security interest was noted on the certificate of title, providing constructive notice to future creditors, and where it was undisputed that the repairs made by the defendant to the motor home were performed well after the certificate of title for the motor home was issued. *Washington State Employees Credit Union v. Robinson*, 206 Ga. App. 782, 427 S.E.2d 15 (1992).

Notification of mechanic's lien foreclosure. — Owner must be notified of institution of mechanic's lien foreclosure proceedings involving the owner's motor vehicle under paragraph (c)(2) of Ga. L. 1975, p. 489, § 1 (see O.C.G.A. § 40-3-54). *Imperial Body Works, Inc. v. Waters*, 156 Ga. App. 887, 275 S.E.2d 822 (1981).

Forfeiture by lienholder. — Because the vehicle owner contested the validity of the amount claimed to be due and it is undisputed that the body shop failed to institute foreclosure proceedings within ten days, the body shop lien was forfeited. *Haire v. Suburban Auto Body, Inc.*, 204 Ga. App. 16, 418 S.E.2d 163 (1992).

Letters from the owner of motor vehicles and equipment to the lienholder contesting the validity of the debt and de-

manding return of the property constituted proper written demand and the lienholder forfeited the lien by the lienholder's failure to timely institute foreclosure proceedings. *Neal v. Natural Gas of Tenn., Inc.*, 222 Ga. App. 774, 476 S.E.2d 73 (1996).

Burden of establishing proper service under O.C.G.A. § 40-3-54(c)(2) rests upon the mechanic lienholder who seeks to gain by the institution of foreclosure proceedings. *Imperial Body Works, Inc. v. Waters*, 156 Ga. App. 887, 275 S.E.2d 822 (1981).

Motor vehicle lien superior to general property lien. — Security interest on a vehicle which is perfected pursuant to Ga. L. 1969, p. 92, § 6 (see O.C.G.A. § 40-3-54) is superior to a mechanic's lien on a vehicle which is perfected under the provisions of former Code 1933, § 67-2003 (see O.C.G.A. § 44-14-363). *Gwinnett Sales & Serv. v. Trust Co.*, 130 Ga. App. 31, 202 S.E.2d 255 (1973).

Effect of mechanic's conditional parting with vehicle. — Mechanic, who conditionally parted with possession of a vehicle for the purposes of providing for the mechanic's continued storage as property subject to a lien, neither lost nor waived its lien as it did not unconditionally part with possession or control of the lien property. *First Nat'l Bank v. Strother Ford, Inc.*, 188 Ga. App. 749, 374 S.E.2d 203 (1988).

Requirement of continued retention of mechanic's lien. — Lien asserted under the authority of O.C.G.A. § 40-3-54 is a statutory mechanic's lien; however, when the lien is perfected by the mechanic's retention of the vehicle, it becomes a statutory lien whose vitality is dependent on the continuation of that retention. *First Nat'l Bank v. Strother Ford, Inc.*, 188 Ga. App. 749, 374 S.E.2d 203 (1988).

Counter affidavit not required. — Owner of property was not required to file a counter affidavit of the lienholder in order to preserve defenses to the affidavit of the lienholder. *Neal v. Natural Gas of Tenn., Inc.*, 222 Ga. App. 774, 476 S.E.2d 73 (1996).

Work must have been authorized by owner. — For a valid debt to exist on a

motor vehicle the work must have been done or the supplies furnished by a contract with the owner or by the authority of the owner. *P & B Corp. of Am., Ltd. v. One 1983 BMW*, 175 Ga. App. 462, 333 S.E.2d 633 (1985).

When insurance adjuster authorized to contract for repairs. — Court was authorized to conclude from the evidence that the plaintiff's repair charges were valid and that the plaintiff was consequently authorized to assert a lien against the vehicle even though it was apparent that the actual contract for the repairs was between the plaintiff and the insurance adjuster rather than the plaintiff and the defendant, there was evidence that the defendant expressly authorized the adjuster to enter into this contract and then knowingly surrendered possession of the vehicle to the plaintiff for the purpose of allowing the repairs to be made. *Carpet Transp., Inc. v. Fisher*, 166 Ga. App. 450, 304 S.E.2d 540 (1983).

Date from which to calculate amount owed to vehicle owner. — Date upon which body shop's lien was forfeited is the proper date from which the jury must calculate the amount owed to the vehicle owner for reasonable hire. *Haire v. Suburban Auto Body, Inc.*, 204 Ga. App. 16, 418 S.E.2d 163 (1992).

Ordering recording of foreclosed mechanic's lien. — Because paragraph (c)(5) of O.C.G.A. § 40-3-54 provides for

immediate enforcement of the mechanic's lien as part of the foreclosure proceedings, nothing is to be gained by ordering the Motor Vehicle Division to record the lien on the certificate of title. *Carpet Transp., Inc. v. Fisher*, 166 Ga. App. 450, 304 S.E.2d 540 (1983).

Contract price paid in full. — No lien may be asserted when the contract price has been paid in full. *Davis v. State*, 167 Ga. App. 701, 307 S.E.2d 272 (1983).

No jury trial. — Paragraph (c)(5) of O.C.G.A. § 40-3-54 clearly contemplates that the determination of the validity of the debt will be made by the court, and no provision is made for the intervention of a jury, nor is a right to trial by jury in such proceedings mandated by the Georgia Constitution. *Carpet Transp., Inc. v. Fisher*, 166 Ga. App. 450, 304 S.E.2d 540 (1983).

Cited in *Wooden v. Michigan Nat'l Bank*, 117 Ga. App. 852, 162 S.E.2d 222 (1968); *Mason v. Garriss*, 360 F. Supp. 420 (N.D. Ga. 1973); *Mason v. Garriss*, 364 F. Supp. 452 (N.D. Ga. 1973); *Roberts v. International Harvester Credit Corp.*, 143 Ga. App. 206, 237 S.E.2d 697 (1977); *Szczepanski v. GMAC*, 558 F.2d 732 (5th Cir. 1977); *Roush v. Dan Vaden Chevrolet, Inc.*, 155 Ga. App. 372, 270 S.E.2d 902 (1980); *Turner v. Jackson*, 157 Ga. App. 31, 276 S.E.2d 92 (1981); *Davison's Auto Serv. Co. v. Security Ins. Co.*, 187 Ga. App. 220, 369 S.E.2d 538 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Superiority of automobile mortgage. — Properly recorded automobile mortgage is superior to mechanic's lien for subsequently provided services and materials. 1975 Op. Att'y Gen. No. U75-51.

Magistrate court has jurisdiction to

foreclose a motor vehicle mechanic's lien under O.C.G.A. § 40-3-54 if the amount demanded or the value of the property claimed does not exceed \$5,000. 1991 Op. Att'y Gen. No. U91-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Garages, Service Stations, and Parking Facilities, § 105 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, § 1830.

ALR. — Lien for repairs to or services in connection with automobile, 62 ALR 1485.

Secured transactions: priorities as between previously perfected security interest and repairman's lien on motor vehicle under Uniform Commercial Code, 69 ALR3d 1162.

Loss of garageman's lien on repaired vehicle by owner's use of vehicle, 74 ALR4th 90.

40-3-55. Assignment of security interests and liens.

(a) The holder of any security interest in or lien on a vehicle may assign, absolutely or otherwise, such holder's security interest or lien to a person other than the owner without affecting the interest of the owner or the validity of the security interest or lien, but any person without notice of the assignment is protected in dealing with the holder of the security interest or lien, and the holder of the security interest or lien remains liable for any obligations as such holder until the assignee is named as the holder of the security interest or lien on the certificate of title.

(b) The assignee may, but need not to perfect the assignment, have the certificate of title endorsed or issued with the assignee named as holder of a security interest or lien, upon delivering to the commissioner or the commissioner's duly authorized county tag agent the certificate and assignment by the holder of a security interest or lien named in the certificate in the form the commissioner prescribes, provided that as an alternative to a handwritten signature, the commissioner may authorize use of a digital signature as long as appropriate security measures are implemented which assure security and verification of the digital signature process, in accordance with regulations promulgated by the commissioner. If the assignment refers to a security interest or lien which is reflected on the certificate of title and the certificate of title is in the possession of the first security interest holder or lienholder as provided by this chapter, the assignee may, but need not to perfect the assignment, have the certificate of title endorsed, or a new certificate of title issued, by complying with Code Section 40-3-27. (Ga. L. 1961, p. 68, § 24; Ga. L. 1962, p. 79, § 14; Ga. L. 1965, p. 304, § 7; Ga. L. 1990, p. 2048, § 3; Ga. L. 1997, p. 739, § 22.)

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Assignments, §§ 5, 11, 114. 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 44 et seq. 38 Am. Jur. 2d, Garages, Service Stations, and Parking Facilities, §§ 119, 127.

C.J.S. — 6A C.J.S., Assignments,

§§ 12, 44. 53 C.J.S., Liens, § 25. 61A C.J.S., Motor Vehicles, § 1834. 72 C.J.S., Pledges, § 37.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 22.

40-3-56. Satisfaction of security interests and liens.

(a)(1) If any security interest or lien listed on a certificate of title is satisfied, the holder thereof shall, within ten days, execute a release in the form the commissioner prescribes and mail or deliver the release to the commissioner and the owner, provided that as an alternative to a handwritten signature, the commissioner may au-

thorize use of a digital signature as long as appropriate security measures are implemented which assure security and verification of the digital signature process, in accordance with regulations promulgated by the commissioner. For the purposes of the release of a security interest or lien the "holder" of the lien or security interest is the parent bank or other lending institution and any branch or office of the parent institution may execute such release.

(2) If the commissioner has entered into an agreement with such a security interest holder or lienholder to provide a means of delivery by secure electronic measures of a notice of the recording of such security interest or lien, at such time as the security interest or lien is released, by secure electronic measures, the certificate of title may be printed and mailed or delivered to the next lienholder or security interest holder or, if there is no other security interest holder or lienholder, to the owner without payment of any fee provided by Code Section 40-3-38.

(b) The owner may then forward the certificate of title, the release, the properly executed title application, and title application fee to the commissioner or the commissioner's duly authorized county tag agent, and the commissioner or authorized county tag agent shall release the security interest or lien on the certificate or issue a new certificate and mail or deliver the certificate to the owner. If the satisfied security interest or lien is one reflected on the certificate of title but the certificate of title is in the custody of the first security interest holder or lienholder as provided by this chapter, the release may be handled as provided in Code Section 40-3-27, and Code Section 40-3-26 shall otherwise be complied with. In the event that the lienholder or security interest holder is no longer in business, an individual shall not be required to submit a release to secure a new certificate of title. The owner shall be required to present to the commissioner or authorized county tag agent certification from the appropriate regulatory agency that such lienholder or security interest holder is no longer in business.

(c) Except for liens and security interests listed on certificates of title for mobile homes, cranes, or vehicles which weigh more than 10,000 pounds gross vehicle weight, which shall be satisfied only in conformity with subsections (a) and (b) of this Code section, any lien or security interest for a vehicle which is 11 model years old or less shall be considered satisfied and release shall not be required after ten years from the date of issuance of a title on which such lien or security interest is listed. For a vehicle which is 12 model years old and greater, any lien or security interest shall be considered satisfied and a release shall not be required after four years from the date of issuance of a title on which such lien or security interest is listed. None of the provisions of this Code section shall preclude the perfection of a new lien or

security agreement, or the perfection of an extension of a lien or security agreement beyond a period of ten years for a vehicle which is 11 model years old or less or beyond a period of more than four years for a vehicle which is 12 model years old or greater, by application for a new certificate of title on which such lien or security agreement is listed. In order to provide for the continuous perfection of a lien or security interest originally entered into for a period of more than ten years for a vehicle which is 11 model years old or less or more than four years for a vehicle which is 12 model years old and greater, other than a mobile home, crane, or vehicle which weighs more than 10,000 pounds gross vehicle weight, an application for a second title on which the lien or security interest is listed must be submitted to the commissioner or the commissioner's duly authorized tag agent before ten years from the date of the original title on which such lien or security interest is listed. Otherwise the lien or security interest shall be perfected as of the date of receipt of the application by the commissioner or the commissioner's duly authorized county tag agent. (Ga. L. 1961, p. 68, § 25; Ga. L. 1962, p. 79, § 15; Ga. L. 1965, p. 304, § 8; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 1992, p. 2978, § 9; Ga. L. 1993, p. 1260, § 10; Ga. L. 1997, p. 739, § 23; Ga. L. 2012, p. 112, § 1-5/HB 872.)

The 2012 amendment, effective July 1, 2012, in the first sentence of paragraph (a)(1), deleted "after demand" following "ten days" and inserted "commissioner and the"; and, in subsection (c), inserted "for a vehicle which is 11 model years old or less" in the middle of the first sentence, added the second sentence, inserted "for a vehicle which is 11 model years old or less or beyond a period of more than four years for a vehicle which is 12 model years old or greater" in the present third sentence, and inserted "which is 11 model years old

or less or more than four years for a vehicle which is 12 model years old and greater," in the present fourth sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 112, § 4-1(a)/HB 872, not codified by the General Assembly, provides that the amendment of this Code section shall apply to all offenses committed on or after July 1, 2012.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 238 (2012).

JUDICIAL DECISIONS

Cited in First Union Nat'l Bank v. GMAC, 191 Ga. App. 323, 381 S.E.2d 573 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 68A Am. Jur. 2d, Secured Transactions, §§ 533, 540.

40-3-57. Disclosure of information as to security interests and liens.

The holder of any security interest or of any lien named in a certificate of title shall, on written request of the owner, or of another holder of any security interest or lien named in the certificate, or of an interested third party, or of the commissioner, disclose any pertinent information as to the security interest, the security agreement, and the debt secured thereby, and the lien and the amount for which it is claimed. (Ga. L. 1961, p. 68, § 26; Ga. L. 1962, p. 79, § 16; Ga. L. 1990, p. 2048, § 3.)

JUDICIAL DECISIONS

Cited in *V.I.P. Homes, Inc. v. Weader*, 216 Ga. App. 412, 454 S.E.2d 548 (1995).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 91 et seq., 103 et seq. icate of Title and Anti-Theft Act (U.L.A.) § 24.
U.L.A. — Uniform Motor Vehicle Certif-

40-3-58. Exclusiveness of chapter.

The method provided in this chapter of perfecting and giving notice of security interests and liens with respect to motor vehicles as to which certificates of title need be obtained under this chapter is exclusive, and such security interests and liens are exempt from the provisions of law which otherwise require or relate to the recording or filing of security interests or liens, claims of lien executions, and other like instruments with respect to such vehicles. (Ga. L. 1961, p. 68, § 27; Ga. L. 1962, p. 79, § 17; Ga. L. 1990, p. 2048, § 3.)

JUDICIAL DECISIONS

Chapter inapplicable to automobile dealers. — Effect of Ga. L. 1962, p. 79 § 17 (see O.C.G.A. § 40-3-58) is that the only way to create security interests in automobiles is by the method provided in Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40), which does not apply to or affect dealers holding automobiles for sale. *Sun Ins. Office, Ltd. v. First Nat'l Bank & Trust Co.*, 113 Ga. App. 782, 149 S.E.2d 753, rev'd on other grounds, 222 Ga. 559, 150 S.E.2d 803 (1966).

Ga. L. 1961, p. 68 is notice statute, having the effect, when complied with, of imputing constructive notice to all who may subsequently acquire an interest in or lien against the property. *Franklin Fin. Co. v. Strother Ford, Inc.*, 110 Ga. App. 365, 138 S.E.2d 679 (1964) (see O.C.G.A. Ch. 3, T. 40).

Actual notice sufficient. — Actual notice of the prior lien to one who subsequently purchases or acquires a security interest is sufficient to preserve the prior-

ity of the lien or of the title. *Franklin Fin. Co. v. Strother Ford, Inc.*, 110 Ga. App. 365, 138 S.E.2d 679 (1964).

After-acquired parts and repairs. — Lender's properly perfected security interest in a vehicle extended to after-acquired parts and repairs, and was superior to a repair shop's mechanic's lien and claim for unjust enrichment regarding parts affixed to the vehicle. *Barnes v. GMAC*, 191 Ga. App. 201, 381 S.E.2d 146 (1989).

Cited in *Maley v. National Acceptance*

Co., 250 F. Supp. 841 (N.D. Ga. 1966); *Wooden v. Michigan Nat'l Bank*, 117 Ga. App. 852, 162 S.E.2d 222 (1968); *Rockwin Corp. v. Kincaid*, 124 Ga. App. 570, 184 S.E.2d 509 (1971); *Gwinnett Sales & Serv. v. Trust Co.*, 130 Ga. App. 31, 202 S.E.2d 255 (1973); *Roush v. Dan Vaden Chevrolet, Inc.*, 155 Ga. App. 372, 270 S.E.2d 902 (1980); *Flatau v. Bank of Banks County (In re Stewart)*, 9 Bankr. 32 (Bankr. M.D. Ga. 1980).

OPINIONS OF THE ATTORNEY GENERAL

Used car dealers. — In order to perfect a dealer's security interest in a vehicle, a used car dealer must follow the requirements specified in O.C.G.A. Ch. 3, T. 40; the method for perfecting a security interest as described in those provisions is exclusive, and such security interests in motor vehicles as to which certificates of title must be obtained are exempt from the provisions of law which otherwise re-

quire or relate to the recording or filing of security interests. 1990 Op. Att'y Gen. No. 90-8.

Used car dealer who has a security interest in a vehicle may exercise all rights afforded to the dealer by the security agreement, including repossession, despite not having perfected the dealer's security interest. 1990 Op. Att'y Gen. No. 90-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, § 35.

C.J.S. — 60 C.J.S., *Motor Vehicles*, §§ 41, 42. 72 C.J.S., *Pledges*, §§ 43, 44.

U.L.A. — *Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.)* § 25.

40-3-59. Certain security interests not affected.

This chapter does not apply to or affect a security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale. A buyer in the ordinary course of trade from the manufacturer or dealer takes free of such security interest. (Ga. L. 1961, p. 68, § 5; Ga. L. 1962, p. 79, § 3; Ga. L. 1990, p. 2048, § 3.)

JUDICIAL DECISIONS

Security interests affected. — It is only the security interests created by purchasers at retail, or in the ordinary course of business, which come under the provisions of Ga. L. 1961, p. 68 and which are affected by it. *McDonald v. Peoples Auto. Loan & Fin. Corp.*, 115 Ga. App. 483, 154 S.E.2d 886 (1967) (see O.C.G.A. Ch. 3, T. 40).

Chapter inapplicable to automobile dealers. — Effect of Ga. L. 1962, p. 79, § 3 (see O.C.G.A. § 40-3-59) is that the only way to create security interests in automobiles is by the method provided in Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40), which does not apply to or affect dealers holding automobiles for sale. *Sun Ins. Office, Ltd. v. First Nat'l Bank &*

Trust Co., 113 Ga. App. 782, 149 S.E.2d 753, rev'd on other grounds, 222 Ga. 559, 150 S.E.2d 803 (1966).

Inapplicable to buyer in ordinary course of trade. — Provision of Ga. L. 1962, p. 79, § 3 (see O.C.G.A. § 40-3-59) regarding a buyer in the ordinary course of trade taking free of a security interest is applicable only in instances when the dealer's title is not subject to certification under Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40). *First Nat'l Bank & Trust Co. v. Smithloff*, 119 Ga. App. 284, 167 S.E.2d 190 (1969).

Security interest perfected under motor vehicle or commercial provisions. — Security interest in a motor vehicle may be perfected under Ga. L. 1961, p. 68 (see O.C.G.A. Ch. 3, T. 40) if created by other than a dealer or manufacturer, or under the Uniform Commercial Code (see O.C.G.A. T. 11) if by a dealer or manufacturer. *Guardian Disct. Co. v. Settles*, 114 Ga. App. 418, 151 S.E.2d 530 (1966).

Mobile home "on consignment" in retailer's inventory. — When manufacturer retained certificate of origin for mo-

bile home which was "on consignment" and not yet included in a retailer's floor-plan arrangement, it was nonetheless in the retailer's inventory and available for sale to the retailer's retail customers, and the rights of the parties were determined under the Uniform Commercial Code, O.C.G.A. T. 11, rather than the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq. *GECC v. Catalina Homes, Inc.*, 178 Ga. App. 319, 342 S.E.2d 734 (1986).

Perfection of security interest under title 11. — When there is vehicle floor-planning, perfection of security interest in inventory comes under the Uniform Commercial Code (see O.C.G.A. T. 11), and priority is governed by former § 11-9-307 (see O.C.G.A. § 11-9-320). *Rome Bank & Trust Co. v. Bradshaw*, 143 Ga. App. 152, 237 S.E.2d 612 (1977).

Cited in *Capital Auto. Co. v. GMAC*, 119 Ga. App. 186, 166 S.E.2d 584 (1969); *First Nat'l Bank & Trust Co. v. McElmurray*, 120 Ga. App. 134, 169 S.E.2d 720 (1969); *United Carolina Bank v. Capital Auto. Co.*, 163 Ga. App. 796, 294 S.E.2d 661 (1982).

40-3-60. Security interest not created by provision for adjustment of rental price.

Notwithstanding any other provision of law, in the case of a motor vehicle or trailer, a transaction does not create a sales or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer. (Code 1981, § 40-3-60, enacted by Ga. L. 1995, p. 739, § 1.)

40-3-61. Proceeds of insurance policy to multiple lienholders in event of total loss of vehicle.

Notwithstanding any other provision of law to the contrary, in any claim involving the total loss of a vehicle which is subject to more than one perfected security interest or lien as recorded on the title of the vehicle, the proceeds of the insurance policy shall be first applied to the debt owed to the first lienholder. In the event that there are proceeds remaining after satisfying the first lienholder, the proceeds shall be then applied to the debt owed to the second and subsequent lienholders in order of priority and any proceeds remaining after the satisfaction of

all such recorded liens shall be paid to the insured. If the amount of debt secured by such security interests or liens or the seniority of such security interests or liens is in doubt, any remaining funds shall be deposited with the court and a complaint for interpleader shall be filed in accordance with Code Section 9-11-22. (Code 1981, § 40-3-61, enacted by Ga. L. 2002, p. 848, § 3.)

Cross references. — Proceeds of insurance policy; limited access by insurers to records, § 33-34-9.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2002, a comma was deleted following "In the event" at the beginning of the second sentence.

ARTICLE 4

OFFENSES

Editor's notes. — The former Article 4, relating to previously registered vehicles and consisting of Code Sections 40-3-70 through 40-3-76, was based on Ga. L. 1961, p. 68, §§ 38, 40-46; Ga. L. 1962, p. 79, §§ 19, 20; Ga. L. 1965, p. 304, § 11;

Ga. L. 1980, p. 507, § 1; Ga. L. 1985, p. 149, § 40; and was repealed by Ga. L. 1990, p. 2048, § 3, effective July 1, 1990.

Ga. L. 1990, p. 2048, § 3, effective July 1, 1990, renumbered former Article 5 as present Article 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 254 et seq.

40-3-90. Certain acts declared felonies.

A person who, with fraudulent intent:

- (1) Alters, forges, or counterfeits a certificate of title;
- (2) Alters or forges an assignment of a certificate of title or an assignment or release of a security interest on a certificate of title or a form the commissioner prescribed;
- (3) Has possession of or uses a certificate of title knowing it to have been altered, forged, or counterfeited;
- (4) Uses a false or fictitious name or address or makes a material false statement, or fails to disclose a security interest, or conceals any other material fact in an application for a certificate of title;
- (5) Alters or forges a notice of a transaction concerning a security interest or lien reflected on the certificate of title as provided by Code Section 40-3-27;
- (6) Knowingly falsifies any information on the statement required by paragraph (2) of subsection (a) of Code Section 40-3-36; or

(7) Willfully violates any other provision of this chapter after having previously violated the same or any other provision of this chapter and having been convicted of that act in a court of competent jurisdiction

shall be guilty of a felony. (Ga. L. 1961, p. 68, § 31; Ga. L. 1965, p. 304, § 9; Ga. L. 1975, p. 1596, § 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 3; Ga. L. 2011, p. 355, § 2/HB 269.)

Editor's notes. — Ga. L. 2011, p. 355, § 21/HB 269, as amended by Ga. L. 2012, p. 112, § 4-2/HB 872, provides that the 2011 amendment becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropri-

ations Act enacted by the General Assembly. Although funds were not appropriated at the 2011, 2012, or 2013 session of the General Assembly, the General Assembly in the 2012 Session by HB 872 eliminated the funding contingency.

JUDICIAL DECISIONS

Furnishing false information by a title applicant. — O.C.G.A. § 40-3-90 does not require that a car dealer file an application for title either with the county tag agent or with the state title agency in order to complete the crime of furnishing false information by a title applicant. That

section simply declares as a felony the act of using a false name in an application for a certificate of title. *Fricks v. State*, 167 Ga. App. 832, 308 S.E.2d 21 (1983).

Cited in *McDonald v. State*, 222 Ga. 596, 151 S.E.2d 121 (1966); *Cole v. State*, 118 Ga. App. 228, 163 S.E.2d 250 (1968).

RESEARCH REFERENCES

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 31.

40-3-91. Certain acts declared misdemeanors.

(a) A person who:

(1) With fraudulent intent, permits another, not entitled thereto, to use or have possession of a certificate of title;

(2) Willfully fails to mail or deliver a certificate of title to the commissioner or to the purchaser of the motor vehicle or a release of security interest or lien to the owner within ten days of the time required by this chapter, except as provided in Code Section 40-3-90;

(3) Willfully fails or refuses to mail or deliver the certificate of title to the commissioner within ten days after having received a notice, as provided for in Code Section 40-3-27 or 40-3-52; or

(4) Willfully violates any other provision of this chapter shall be guilty of a misdemeanor.

(b) Any person, firm, or corporation which knowingly makes any false statement in any title application as to the date a vehicle was sold or acquired or as to the date of creation of a security interest or lien shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100.00 or imprisoned for a period not to exceed 30 days.

(c) Any person, firm, or corporation which delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100.00 or imprisoned for a period not to exceed 30 days for the acceptance or delivery of each certificate of title assigned in blank. (Ga. L. 1961, p. 68, § 31; Ga. L. 1965, p. 304, § 9; Ga. L. 1969, p. 92, § 7; Ga. L. 1975, p. 1596, § 2; Ga. L. 1981, p. 883, § 12; Ga. L. 1990, p. 2048, § 3.)

JUDICIAL DECISIONS

Cited in McDonald v. State, 222 Ga. 596, 151 S.E.2d 121 (1966).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 96 et seq. 61A C.J.S., Motor Vehicles, §§ 1504 et seq., 1631 et seq., 1748.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 31.

40-3-92. False report of theft or conversion.

A person who knowingly makes a false report to a peace officer or the commissioner of the theft or conversion of a vehicle shall be guilty of a misdemeanor of a high and aggravated nature. (Ga. L. 1961, p. 68, § 33; Ga. L. 1990, p. 2048, § 3; Ga. L. 1991, p. 969, § 1.)

Cross references. — Penalty for false report of crime generally, § 16-10-26.

JUDICIAL DECISIONS

Rule of lenity not applicable. — Rule of lenity in sentencing a defendant did not apply because neither the false report of a crime statute nor the false report of a theft statute (O.C.G.A. §§ 16-10-26 and 40-3-92) contained the element in the

false statement statute under O.C.G.A. § 16-10-20 that the falsity concern a matter within the jurisdiction of a governmental entity; the defendant had been convicted of all three crimes. *Reese v. State*, 296 Ga. App. 186, 674 S.E.2d 68 (2009).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Obstructing Justice, § 16.

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 36.

U.L.A. — Uniform Motor Vehicle Certif-

40-3-93. Evidence of criminal intent or knowledge.

In a prosecution for a crime specified in this chapter, evidence that the defendant has committed a prior act or acts of the same kind is admissible to prove criminal intent or knowledge. (Ga. L. 1961, p. 68, § 35; Ga. L. 1990, p. 2048, § 3.)

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 38. **U.L.A.** — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 38.

U.L.A. — Uniform Motor Vehicle Certif-

40-3-94. Penalties.

Unless another penalty is provided in this chapter:

(1) A person convicted of a felony for the violation of a provision of this chapter shall be punished by a fine of not less than \$500.00 nor more than \$5,000.00, or by imprisonment for not less than one year nor more than five years, or by both such fine and imprisonment;

(2) A person convicted of a misdemeanor for the violation of a provision of this chapter shall be punished as provided in Code Section 17-10-3. (Ga. L. 1961, p. 68, § 36; Ga. L. 1990, p. 2048, § 3.)

JUDICIAL DECISIONS

Cited in Daniel v. State, 118 Ga. App. 370, 163 S.E.2d 863 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 88. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 27 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 96 et seq.

ALR. — Civil rights and liabilities as affected by failure to comply with regula-

tions as to registration of automobile or motorcycle, or licensing of operator, 54 ALR 374.

Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates, 57 ALR3d 606.

40-3-95. Effect on other laws.

The penal provisions of this chapter in no way repeal or modify any existing provision of criminal law but are additional and supplementary thereto. (Ga. L. 1961, p. 68, § 37; Ga. L. 1990, p. 2048, § 3.)

JUDICIAL DECISIONS

Cited in *Daniel v. State*, 118 Ga. App. 370, 163 S.E.2d 863 (1968).

CHAPTER 4

IDENTIFICATION OF AND PURCHASE AND RESALE
OF MOTOR VEHICLES AND PARTS

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Identification of Passenger Cars,
Truck Chassis, and Components

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Alteration or Removal of
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- 40-4-21.

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Article 3

Purchase and Resale of Used Motor
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Certain parts excepted from
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40-4-40 through 40-4-43.
- 40-4-45.

Sale of farm tractors.

ARTICLE 1

IDENTIFICATION OF PASSENGER CARS, TRUCK CHASSIS, AND
COMPONENTS

RESEARCH REFERENCES

ALR. — Constitutionality of statute which identifying marks have been re-
making possession of automobile from moved a crime, 4 ALR 1538; 42 ALR 1149.

40-4-1. Definitions.

As used in this article, the term:

- (1) “Component” means a passenger car engine or a passenger car
transmission.

(2) "New passenger car" means any passenger car which has never been the subject of a sale at retail to the general public.

(3) "Passenger car" means every motor vehicle designed for carrying ten passengers or less except trackless trolleys or vehicles used exclusively upon streetcar rails or tracks or overhead trolley wires.

(4) "Used passenger car" means any passenger car which has been the subject of a sale at retail to the general public. (Ga. L. 1966, p. 188, § 3; Ga. L. 1967, p. 113, § 3; Ga. L. 1996, p. 336, § 13A.)

JUDICIAL DECISIONS

Automobile which was a "used demo" was "new" car. — Automobile leased by plaintiffs from defendant dealer as a "used demo" was a "new" car, not a "used" car, and the fact that the car was previously titled to the dealer's son-in-law did not create an issue of fraud in violation of the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq. *Toirkens v. Willett Toyota, Inc.*, 192 Ga. App. 109, 384 S.E.2d 218 (1989).

Automobile used as demonstrator was "new car." — In an action alleging

violations of the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., because the van leased to plaintiffs was always titled in the dealer and was never the subject of a retail sale or lease, the vehicle was a "new car," and the dealer did not engage in fraudulent or unfair business practices by listing the vehicle as "new," even though the vehicle had been driven as a demonstrator and had been in a collision. *Kondo v. Marietta Toyota, Inc.*, 224 Ga. App. 490, 480 S.E.2d 851 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 1.

40-4-2. Application of article.

(a) The provisions of this article requiring vehicle identification numbers on passenger cars and truck chassis with features designed for specialized requirements of a wrecker shall apply only to such items manufactured after January 1, 1967, and designated by the manufacturer as a 1968 or subsequent model.

(b) This article shall not apply to motorcycles, personal transportation vehicles, motor driven cycles, school buses, farm tractors, buses, truck tractors, road tractors, trucks, trailers, semitrailers, pole trailers, streetcars, or go-carts or to any vehicle whether self-propelled or not which is not required to be issued a license plate under the laws of this state.

(c) This article shall not apply to the following special purpose vehicles:

Type 1. Truck chassis with body (other than station wagon or bus body) designed primarily for the transportation of persons;

Type 2. Truck chassis with other features designed for a specialized requirement other than a wrecker, including but not limited to fire fighting or snowplow features;

Type 3. Truck chassis with station wagon body;

Type 4. Passenger car chassis with body designed for the commercial transportation of persons;

Type 5. Bus chassis with other features designed for a specialized requirement, including but not limited to mobile laboratory, office, post office, classroom, studio, rescue unit, or library features;

Type 6. Utility vehicle, being a motor vehicle with a removable top, designed for carrying passengers or cargo and with particular features for operation both on highway and cross-country.

(d) This article shall not apply to the components of any vehicle excluded by subsection (b) or (c) of this Code section. (Ga. L. 1966, p. 188, § 6; Ga. L. 1967, p. 113, § 6; Ga. L. 1992, p. 6, § 40; Ga. L. 1993, p. 91, § 40; Ga. L. 1996, p. 336, § 13A; Ga. L. 1997, p. 143, § 40; Ga. L. 2014, p. 745, § 5/HB 877.)

The 2014 amendment, effective July 1, 2014, inserted “personal transportation vehicles,” near the beginning of subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, in subsection (c), “requirement,” was substituted for “requirement” in Type 5.

40-4-3. Identification numbers required.

(a) **New passenger cars and components manufactured within state.** After January 1, 1997, new passenger cars, truck chassis with features designed for specialized requirements of wreckers, passenger car engines, and transmissions, as specified in this article, manufactured within this state and intended for sale to the general public within this state, shall be required to have placed upon them vehicle identification numbers and component identification numbers. The vehicle identification number shall not be the same as the vehicle identification number of any other passenger car or truck chassis manufactured by the same manufacturer. The component identification number shall not be the same as the component identification number for any other like component manufactured by the same manufacturer but may be the same as the vehicle identification number if the component is installed as original equipment in the passenger car or truck chassis.

(b) **New passenger cars sold within state.** After January 1, 1997, no new passenger car or truck chassis with features designed for specialized requirements of a wrecker shall be sold to the general public in this state unless such passenger car shall bear a vehicle identifica-

tion number, which shall not be the same as the vehicle identification number of any other passenger car made by the same manufacturer.

(c) **New components sold within state.** After January 1, 1967, no new passenger car engine or passenger car transmission shall be sold to the general public in this state unless it shall bear an identification number. The component identification number shall not be the same as the identification number for any other like passenger car component made by the same manufacturer but may be the same as the vehicle identification number if the particular component has been installed as original equipment in the passenger car prior to its sale to the general public. (Ga. L. 1966, p. 188, § 1; Ga. L. 1967, p. 113, § 1; Ga. L. 1996, p. 336, § 13A.)

Administrative rules and regulations. — Motor Vehicle Identification Numbers Issued by the State Revenue Commissioner, Official Compilation of the

Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-18.

40-4-4. How identification numbers affixed; size and appearance.

(a) The identification numbers required by Code Section 40-4-3 shall be placed upon the passenger car, truck chassis, and component parts by the manufacturer thereof.

(b) The identification numbers shall be placed upon the passenger car, truck chassis, and components in such a manner that any attempt to remove, alter, deface, obliterate, or destroy them will be ascertainable. The numbers may be affixed by any suitable manufacturing process that will result in the numbers becoming a permanent part of the passenger car or component.

(c) The identification numbers shall be of a height and width easily readable by the naked eye. They may consist of letters, digits, or any combination of them.

(d) The identification numbers may be in accordance with recommended practices approved by the Society of Automotive Engineers as to material, lettering, manufacturing, and installation.

(e) Vehicle identification numbers shall be easily accessible for inspection. (Ga. L. 1966, p. 188, §§ 1, 2; Ga. L. 1967, p. 113, §§ 1, 2; Ga. L. 1996, p. 336, § 13A.)

OPINIONS OF THE ATTORNEY GENERAL

Attachment solely to machine in engine compartment. — Automobiles may not be sold in this state after January 1,

1967, with vehicle identification numbers attached solely to the machine in the engine compartment without subjecting

the seller to the possibility of being prosecuted for a misdemeanor offense. 1965-66 Op. Att'y Gen. No. 66-246.

40-4-5. Identification of truck chassis with features designed for specialized requirements of wreckers.

Truck chassis with features designed for specialized requirements of a wrecker manufactured after January 1, 1967, but before January 1, 1997, shall, at the time the vehicle is first registered on or after January 1, 1997, pursuant to Code Section 40-2-21, be issued by the Department of Revenue a unique vehicle identification number which shall be affixed to and maintained upon the chassis by the owner in a manner consistent with the requirements of subsections (b) and (e) of Code Section 40-4-4. (Code 1981, § 40-4-5, enacted by Ga. L. 1996, p. 336, § 13A; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 16-1/HB 501.)

Cross references. — Maintenance of records by scrap metal processors, § 43-43-2. Maintenance of records by used car dealers, § 43-47-13.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “shall,” was substituted for “shall” and “Code Sec-

tion 40-2-21,” was substituted for “Code Section 40-2-2”.

Editor’s notes. — Ga. L. 1996, p. 336, § 13A, effective January 1, 1997, renumbered former Code Section 40-4-5 as present Code Section 40-4-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 50, 94, 110, 149.

77 Am. Jur. 2d, Vendor and Purchaser, § 149 et seq.

40-4-5.1. Identification requirements for personal transportation vehicles.

(a) On or after July 1, 2014, on every newly manufactured personal transportation vehicle, the manufacturer shall inscribe a permanent, durable, corrosion-resistant name plate or marking which contains a unique serial number, name of manufacturer, model name or code, date code, contact information, nominal system voltage, fuel type, and load capacity.

(b) The name plate or marking shall be of a height and width easily readable by the naked eye. The unique serial number may consist of letters, digits, or any combination of letters and digits.

(c) The name plate shall be easily accessible for inspection. (Code 1981, § 40-4-5.1, enacted by Ga. L. 2014, p. 745, § 6/HB 877.)

Effective date. — This Code section became effective July 1, 2014.

40-4-6. Records to be kept by purchasers and sellers of used passenger cars, truck chassis, and components.

Any person who purchases or sells or offers for sale any used passenger car, truck chassis, engine, or transmission required to be numbered by this article shall keep a permanent record of such transactions. Such record shall include: the item and its identification number or numbers; the name and address of the person from whom the item was purchased; and the name and address of the person to whom the item was sold. Such record shall be kept for three years from the date of the transaction and shall be available to all law enforcement officers for inspection at any reasonable time during business hours without prior notice or the necessity of obtaining a search warrant. (Ga. L. 1966, p. 188, § 4; Ga. L. 1967, p. 113, § 4; Code 1981, § 40-4-6, as redesignated by Ga. L. 1996, p. 336, § 13A.)

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 1, 27, 30 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1746, 1747.

ALR. — Constitutionality of statute making possession of automobile from

which identifying marks have been removed a crime, 4 ALR 1538; 42 ALR 1149.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 54 ALR 374.

40-4-7. Penalties.

(a) **Sale, shipment, or manufacture of unnumbered passenger car or component.** Any person who sells or offers for sale in this state, ships or causes to be shipped into this state, or manufactures with the intention that it shall be sold at retail in this state a passenger car, truck chassis, passenger car engine, or passenger car transmission that does not bear an identification number or numbers as required by this article shall be guilty of a misdemeanor.

(b) **Failure to keep records.** Any person who purchases, sells, or offers for sale any passenger car, truck chassis, passenger car engine, or passenger car transmission that is required by this article to bear an identification number when intended to be sold at wholesale or retail within this state and who willfully fails to keep the records required by Code Section 40-4-6 shall be guilty of a misdemeanor for each such failure. (Ga. L. 1966, p. 188, § 5; Ga. L. 1967, p. 113, § 5; Ga. L. 1985, p. 149, § 40; Ga. L. 1994, p. 97, § 40; Code 1981, § 40-4-7, as redesignated by Ga. L. 1996, p. 336, § 13A.)

ARTICLE 2

ALTERATION OR REMOVAL OF IDENTIFICATION NUMBERS

Cross references. — Duty of purchaser of vehicle or part from which identification has been removed, § 40-4-41.

Administrative rules and regulations. — Motor Vehicle Identification

Numbers Issued by the State Revenue Commissioner, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Vehicle Division, Chapter 560-10-18.

40-4-20. Definitions.

As used in this article, the term:

(1) “Falsify” includes alter or forge.

(2) “Identification number” means an identifying number, serial number, engine number, or other distinguishing number or mark placed on a vehicle or engine by its manufacturer or by authority of the commissioner or in accordance with the laws of another state or country.

(3) “Remove” includes deface or destroy. (Ga. L. 1961, p. 68, § 34; Ga. L. 1985, p. 149, § 40; Ga. L. 1992, p. 6, § 40.)

JUDICIAL DECISIONS

Cited in Barron v. State, 109 Ga. App. 786, 137 S.E.2d 690 (1964); Law v. State, 110 Ga. App. 364, 138 S.E.2d 588 (1964);

Undercofler v. White, 113 Ga. App. 853, 149 S.E.2d 845 (1966); Daniel v. State, 118 Ga. App. 370, 163 S.E.2d 863 (1968).

40-4-21. Removal or falsification of identification number.

(a) A person who willfully removes, except in conformance with Code Section 40-3-35, or falsifies an identification number of a vehicle or an engine for a vehicle is guilty of a misdemeanor.

(b) A person who, willfully and with intent to misrepresent the identity of a vehicle or engine, removes or falsifies an identification number of the vehicle or engine with intent to convert or defraud is guilty of a felony. A person convicted of a felony under this subsection shall be punished by a fine of not less than \$500.00 nor more than \$5,000.00, or by imprisonment for not less than one year nor more than five years, or by both such fine and imprisonment. (Ga. L. 1961, p. 68, § 34; Ga. L. 1984, p. 22, § 40.)

JUDICIAL DECISIONS

Merger of counts. — As to any one vehicle, separate counts charging possession with knowledge that an identification

number has been “removed and falsified” and possession with knowledge that an identification number has been “falsified”

are merged, and it is error to sentence a defendant to consecutive sentences based on a theory that these counts refer to separate transactions. *Gary v. State*, 122 Ga. App. 151, 176 S.E.2d 478 (1970).

Verdicts not mutually exclusive. — Although the defendant characterized the jury's verdicts finding the defendant guilty of operating a chop shop and of falsifying a vehicle identification number as mutually exclusive, the two guilty verdicts returned by the jury could be logically reconciled as a finding that a person wilfully removed or falsified the identification number of a vehicle does not logically exclude a finding that the person owned, operated, or conducted a premise

in which the person knowingly altered a vehicle identification number with the intent of misrepresenting the vehicle's identity, and the defendant's challenge was actually predicated upon the inconsistent verdict rule, which had been abolished in Georgia. *Wilmott v. State*, 326 Ga. App. 1, 755 S.E.2d 818 (2014).

Cited in *Barron v. State*, 109 Ga. App. 786, 137 S.E.2d 690 (1964); *Law v. State*, 110 Ga. App. 364, 138 S.E.2d 588 (1964); *Undercoffer v. White*, 113 Ga. App. 853, 149 S.E.2d 845 (1966); *Daniel v. State*, 118 Ga. App. 370, 163 S.E.2d 863 (1968); *Hambright v. State*, 161 Ga. App. 877, 289 S.E.2d 24 (1982).

RESEARCH REFERENCES

U.L.A. — Uniform Motor Vehicle Certificate of Title and Anti-Theft Act (U.L.A.) § 37.

ALR. — Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 37 ALR 1465; 52 ALR 701; 63 ALR 688; 94 ALR 948; 58 ALR2d 1351.

Criminal liability, under state law, concerning illegal removal or alteration of vehicle identification number, including sale or possession of altered motor vehicles or parts, 107 ALR5th 567.

40-4-22. Buying, selling, receiving, concealing, using, possessing, or disposing of motor vehicle or part thereof from which identification has been removed or altered.

(a) It shall be unlawful to buy, sell, receive, dispose of, conceal, use, or possess any motor vehicle, or any part thereof, from which the manufacturer's serial numbers or other distinguishing numbers or identifying marks have been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of such motor vehicle.

(b) Any person who knowingly violates any provisions of subsection (a) of this Code section is guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary for not less than one nor more than five years. (Ga. L. 1918, p. 264, § 1; Code 1933, § 68-9916; Ga. L. 1966, p. 10, § 1; Ga. L. 1982, p. 3, § 40.)

JUDICIAL DECISIONS

Guilty knowledge of alteration required. — To convict the driver of violating former Code 1933, § 68-9916, the finder of fact must find knowledge of al-

teration, which was the gist of the offense. *Dooley v. State*, 145 Ga. App. 539, 244 S.E.2d 55, cert. denied, 439 U.S. 912, 99 S. Ct. 282, 58 L. Ed. 2d 258 (1978); *Martin v.*

State, 160 Ga. App. 275, 287 S.E.2d 244 (1981) (see O.C.G.A. § 40-4-22).

Description of property in indictment. — Property need not be described in an offense under Ga. L. 1918, p. 264, § 1 (see O.C.G.A. § 40-4-22) with the same accuracy as in simple larceny. *Glass v. State*, 26 Ga. App. 157, 106 S.E. 13, cert. denied, 26 Ga. App. 801, (1921).

Knowing possession of "clipped" car, meaning that one-half of described vehicle had been welded to one-half of unidentified vehicle, except under a license to rebuild, is a felony. *Bill Spreen Toyota, Inc. v. Jenquin*, 163 Ga. App. 855, 294 S.E.2d 533 (1982).

Evidence deemed sufficient to authorize conviction. — Evidence, though circumstantial, was sufficient to authorize a conviction for unlawful alteration under

former Code 1933, § 68-9916 after the defendant removed the identification plate from the cab of defendant's 1975 vehicle and placed the identification plate in the 1978 automobile, seeking to conceal the true identity of the stolen goods and to misrepresent the goods as being defendant's own. *McJunkin v. State*, 160 Ga. App. 30, 285 S.E.2d 756 (1981) (see O.C.G.A. § 40-4-22).

Cited in *Alexander v. State*, 31 Ga. App. 776, 122 S.E. 95 (1924); *Gravett v. State*, 33 Ga. App. 33, 125 S.E. 503 (1924); *Goodwyne v. State*, 38 Ga. App. 183, 143 S.E. 443 (1928); *Flynn v. State*, 88 Ga. App. 709, 77 S.E.2d 559 (1953); *Daniel v. State*, 118 Ga. App. 370, 163 S.E.2d 863 (1968); *Ramey v. State*, 239 Ga. App. 620, 521 S.E.2d 663 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 391, 392.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1745, 1746.

ALR. — Constitutionality of statute making possession of an automobile from which identifying marks have been removed a crime, 42 ALR 1149.

40-4-23. When identification number not deemed falsified.

An identification number may be placed on a vehicle or engine by its manufacturer in the regular course of business or placed or restored on a vehicle or engine by authority of the commissioner without violating this article. An identification number so placed or restored is not falsified. (Ga. L. 1961, p. 68, § 34.)

JUDICIAL DECISIONS

Cited in *Barron v. State*, 109 Ga. App. 786, 137 S.E.2d 690 (1964); *Law v. State*, 110 Ga. App. 364, 138 S.E.2d 588 (1964);

Undercoffer v. White, 113 Ga. App. 853, 149 S.E.2d 845 (1966); *Daniel v. State*, 118 Ga. App. 370, 163 S.E.2d 863 (1968).

ARTICLE 3

PURCHASE AND RESALE OF USED MOTOR VEHICLES, USED PARTS, AND FARM TRACTORS

40-4-40. Records to be kept by persons purchasing used motor vehicles or parts for resale.

Any person who purchases a used motor vehicle or any used part comprising a component part of any motor vehicle for resale shall keep

an accurate record of the date of purchase, the price paid, and the name and address of the person from whom the vehicle or part is purchased. Such information shall be maintained in permanent records for a period of not less than one year and shall be open to inspection by appropriate law enforcement officers. (Ga. L. 1963, p. 436, § 1.)

Cross references. — Maintenance of records by scrap metal processors, § 43-43-2. Maintenance of records by used car dealers, § 43-47-12.

Administrative rules and regulations. — Licensing, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration of Used Motor Vehicles Dealers and Used

Motor Vehicle Parts Dealers, Used Motor Vehicle Division, Chapter 681-3.

Dealer License Plates, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration of Used Motor Vehicles Dealers and Used Motor Vehicle Parts Dealers, Used Motor Vehicle Division, Chapter 681-4.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1745.

40-4-41. Duty of purchaser of vehicle or part from which identification has been removed or altered.

Any person who purchases for resale a motor vehicle or used part from which the identification markings or plates have been removed, altered, mutilated, or destroyed shall immediately report such purchase to the sheriff of the county in which such person conducts his business. (Ga. L. 1963, p. 436, § 4.)

Cross references. — Alteration or removal of identification numbers, § 40-4-20 et seq.

40-4-42. Presumption that vehicles and parts were purchased for resale.

The possession of the motor vehicles and parts covered by Code Sections 40-4-40, 40-4-41, this Code section, 40-4-43, and 40-4-44 shall be prima-facie evidence that they were purchased for the purpose of resale. (Ga. L. 1963, p. 436, § 5.)

40-4-43. Penalty for violation of Code Section 40-4-40 or Code Section 40-4-41.

Any person who fails to comply with any provision of Code Section 40-4-40 or 40-4-41 shall be guilty of a misdemeanor. (Ga. L. 1963, p. 436, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 1, 27, 30 et seq.

40-4-44. Certain parts excepted from application of Code Sections 40-4-40 through 40-4-43.

Code Sections 40-4-40 through 40-4-43 shall not apply to the purchase of any motor vehicle part which may be removed from a motor vehicle by an individual possessing the ordinary skill and dexterity of an ordinary motor vehicle owner. (Ga. L. 1963, p. 436, § 3.)

40-4-45. Sale of farm tractors.

(a) As used in this Code section, the term:

(1) "Certificate of origin" means the evidence of origin of title of a farm tractor from the manufacturer. It shall show the following information:

(A) The name and the address of the manufacturer;

(B) The serial number of the farm tractor; and

(C) The year, make, and model of the farm tractor.

(2) "Dealer" means a person engaged in buying, selling, trading, or exchanging farm tractors who has an established place of business in this state.

(3) "Farm tractor" means any self-propelled vehicle having more than 15 horsepower designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(4) "Person" means a natural person, firm, partnership, association, or corporation.

(5) "Serial number" means the number or letters, or both, placed on a farm tractor by stamping thereon or by affixing a plate thereto by the manufacturer for the purpose of identifying the tractor.

(b) It shall be unlawful for any dealer to sell, trade, or exchange any farm tractor in this state which was manufactured after July 1, 1970, unless:

(1) The original serial number is stamped upon or affixed to the farm tractor; and

(2) The certificate of origin is presented to the purchaser, or to the person who otherwise receives the farm tractor through an exchange

or trade with the dealer, at the time the sale, trade, or exchange is completed.

(c) Any person violating any provision of this Code section shall be guilty of a misdemeanor. (Ga. L. 1970, p. 242, §§ 1-3; Ga. L. 1994, p. 97, § 40.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 1 et seq., 15, 18, 78, 86 et seq.

ALR. — Constitutionality, construction, and effect of statute relating specifically to

rights, remedies, and obligations of parties to sale of farm machinery, 78 ALR 1363; 87 ALR 290.

CHAPTER 5

DRIVERS' LICENSES

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Article 3

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18 for certain point accumulations; reinstatement of license following suspension.

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40-5-67.2. Terms and conditions for suspension of license under subsection (c) of Code Section 40-5-67.1.

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- 40-5-69. Circumstances not affecting suspensions by operation of law.
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- 40-5-72. Forwarding of license, tag, and tag registration to department; notice; penalty.
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Suspension of License for Certain Drug Offenses

- 40-5-75. Suspension of licenses by operation of law.
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Article 4

Restoration of Licenses to Persons Completing Defensive Driving Course or Alcohol or Drug Program

- 40-5-80. Purpose of article.
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- Sec. drug course; clinic course offering [Repealed].
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Article 5

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- 40-5-121. Driving while license suspended or revoked.
- 40-5-122. Permitting unlicensed person to drive.
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Article 7

Commercial Drivers' Licenses

- 40-5-140. Short title.
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- 40-5-143. Driving commercial motor vehicle with more than one license prohibited.
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- 40-5-145. Duties of employer.
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- Sec. strictions; information to be obtained before issuance; notice of issuance; expiration of license; renewal.
- 40-5-151. Disqualification from driving; action required after suspending, revoking, or canceling license or nonresident privileges.
- 40-5-152. Operating vehicle while having measurable alcohol in system; refusal to take chemical test.
- 40-5-153. Implied consent to chemical test; administration of test; procedure.
- 40-5-154. Notice to licensing state of conviction of nonresident licensee for violation of state law or local ordinance.
- 40-5-155. Information to be available to driver's license administrators of other states, employers, and insurers.
- 40-5-156. Rules and regulations.
- 40-5-157. Authority for commissioner to enter into agreements, arrangements, or declarations.
- 40-5-158. Driving with license issued by state or province or territory of Canada in accordance with minimum federal standards.
- 40-5-159. Violations.

Article 8

Identification Cards for Persons with Disabilities

- 40-5-170. Definitions.
- 40-5-171. Issuance and contents of identification cards for persons with disabilities.
- 40-5-172. Term of card issued to person with permanent disability; issuance to person with temporary disability; renewal.
- 40-5-173. Format of card.
- 40-5-174. Proof of need for special transportation services for persons with disabilities.
- 40-5-175. Admission to seating for persons with disabilities at public events.
- 40-5-176. Rules and regulations.

Sec.
40-5-177. Evidence of applicant's birth date required.
40-5-178. Fee for card; waiver for person with veteran's driver's license.

Sec.
40-5-179. Fraudulent identification cards; penalties.

Cross references. — Driver education course included for purposes of enrollment counts of public school students, § 20-2-160. Registration and licensing of motor vehicles, T. 40, C. 2. Licenses for driver training instructors and operators of driver training schools, T. 43, C. 13.

Editor's notes. — Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify" laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

Ga. L. 1990, p. 2048, § 17, not codified by the General Assembly, provides: "Prosecution for any violation of Sections 4 and 5 of this Act occurring prior to January 1, 1991, is not affected or abated by this Act."

Administrative rules and regulations. — General provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Chapter 375-31.

Law reviews. — For note on 1991 amendments to this chapter, see 8 Georgia. St. U.L. Rev. 129 (1992).

For comment, "You Better Smile When You Say 'Cheese!': Whether the Photograph Requirement for Drivers' Licenses Violates the Free Exercise Clause of the First Amendment," see 61 Mercer L. Rev. 611 (2010).

JUDICIAL DECISIONS

Effect of chapter. — O.C.G.A. Ch. 5, T. 40 comprehensively revised the provisions

for licensing drivers. *Littlejohn v. State*, 165 Ga. App. 562, 301 S.E.2d 917 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Suspension and retention of licenses of convicted racers. — Amendment to the Uniform Rules of the Road Act, having been approved by the Governor subsequent to approval of the Drivers Licensing Act, prevails over the Drivers Licensing Act to the extent that there is a conflict between them; thus, the department should continue to suspend and retain drivers licenses of persons convicted of racing in accordance with the provi-

sions of the Uniform Rules of the Road Act and disregard the inconsistent provisions of the Drivers Licensing Act which were approved prior to the Uniform Rules of the Road Act. 1975 Op. Att'y Gen. 75-117.

Disclosure of driving record to private attorney may not be made without authorization from the driver to whom the disclosure relates. 1975 Op. Att'y Gen. No. 75-122.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 100 et seq.

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or

motorcycle, or licensing of operator, 58 ALR 532; 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375.

Sufficiency of indictment or information charging in words of statute offense relating to operation of automobile, 115 ALR 357.

Traffic violation as violation of law within provision of life or accident insurance policy or certificate excepting death or injury due to violation of law, 125 ALR 1104.

Negligent entrustment of motor vehicle to unlicensed driver, 55 ALR4th 1100.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Completion of program for operation of watercraft while under influence of alcohol, toxic vapors, or drugs, § 52-7-12.

40-5-1. Definitions.

As used in this chapter, the term:

(1) "Assessment component" means the standard screening instrument or instruments designated by the Department of Driver Services which are used to screen for the extent of an individual's alcohol or drug use and its impact on driving.

(2) Reserved.

(3) "Cancellation of driver's license" means the annulment or termination by formal action of the department of a person's license because of some error or defect in the license or because the licensee is no longer entitled to such license. The cancellation of a license is without prejudice, and application for a new license may be made at any time after such cancellation.

(3.1) "Clinical evaluation" means an evaluation under Chapter 7 of Title 37 at a facility to diagnose an individual's substance abuse or dependence and, if indicated, to refer the individual to appropriate treatment.

(4) "Code Section 40-6-391" means Code Section 40-6-391 of the Official Code of Georgia Annotated, as now or hereafter amended, any federal law or regulation substantially conforming to or parallel with the offense covered under Code Section 40-6-391, any local ordinance adopted pursuant to Article 14 of Chapter 6 of this title, which ordinance adopts the provisions of Code Section 40-6-391, or any previously existing or existing law of this or any other state, which law was or is substantially conforming to or parallel with Code Section 40-6-391.

(5) "Commissioner" means the commissioner of driver services.

(6) "Conviction" means a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a

plea of guilty, or a finding of guilt on a traffic violation charge, regardless of whether the sentence is suspended, probated, or rebated.

(7) "Department" means the Department of Driver Services.

(8) "Disqualification of driver's license" means a prohibition against driving a commercial motor vehicle.

(9) Reserved.

(10) "Intervention component" means a program which delivers therapeutic education about alcohol and drug use and driving and peer group counseling concerning alcohol and drug use over a period of 20 hours utilizing a methodology and curriculum approved and certified by the Department of Driver Services for the DUI Alcohol or Drug Use Risk Reduction Programs under subsection (e) of Code Section 40-5-83.

(11) Reserved.

(12) "Mail" means to deposit in the United States mail properly addressed and with postage prepaid. For purposes of payment of a reinstatement or restoration fee for a driver's license suspension or revocation, "mail" shall also mean payment via means other than personal appearance.

(13) "Owner" means a person other than a lienholder or security interest holder having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a lien or security interest in another person, but excludes a lessee under a lease not intended as security.

(13.5) "Personal information" means any information that identifies a person, including but not limited to an individual's fingerprint, photograph, or computerized image, social security number, driver identification number, name, address (other than five-digit ZIP Code), telephone number, and medical or disability information.

(14) "Present and future minimum motor vehicle insurance coverage" means minimum coverage as specified in Chapter 34 of Title 33, which coverage cannot be canceled except for a subsequent conviction of an offense enumerated in Code Section 40-5-54 and after giving the commissioner 20 days' written notice prior to the effective date of the cancellation.

(15) "Resident" means a person who has a permanent home or abode in Georgia to which, whenever such person is absent, he or she has the intention of returning. For the purposes of this chapter, there is a rebuttable presumption that the following person is a resident:

(A) Any person who accepts employment or engages in any trade, profession, or occupation in Georgia or enters his or her children to be educated in the private or public schools of Georgia within ten days after the commencement of such employment or education; or

(B) Any person who, except for infrequent, brief absences, has been present in the state for 30 or more days;

provided, however, that no person shall be considered a resident for purposes of this chapter unless such person is either a United States citizen or an alien with legal authorization from the U.S. Immigration and Naturalization Service.

(16) "Revocation of driver's license" means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the public highways, which license shall not be subject to renewal or restoration, except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this chapter.

(16.1) "Singularly or in combination" means that the department, in determining whether or not a person's license or privilege to operate a motor vehicle on the public highways is to be revoked as a habitual violator, is to treat each charge for which a conviction was obtained as a separate transaction when determining whether or not a person has the requisite convictions which mandate such a revocation.

(16.2) "Substance abuse treatment program" means a program of treatment under Chapter 7 of Title 37 at a facility authorized to provide services designed to meet an individual's substance abuse treatment needs based upon the results of a clinical evaluation performed by a provider other than the provider of the treatment program for such individual.

(17) "Suspension of driver's license" means the temporary withdrawal by formal action of the department of a person's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department. (Code 1933, § 68B-101, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 519, § 2; Ga. L. 1990, p. 1154, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 514, § 1; Ga. L. 1995, p. 920, § 1; Ga. L. 1996, p. 1250, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 760, § 8; Ga. L. 1997, p. 1446, § 1; Ga. L. 1999, p. 731, § 1; Ga. L. 2000, p. 951, § 5-1; Ga. L. 2005, p. 334, § 17-1/HB 501; Ga. L. 2010, p. 9, § 1-78/HB 1055; Ga. L. 2010, p. 932, § 1/HB 396; Ga. L. 2011, p. 355, § 1/HB 269; Ga. L. 2014, p. 710, § 1-6/SB 298.)

The 2014 amendment, effective July 1, 2014, substituted "Reserved" for the former provisions of paragraph (9), which read: "'DUI Alcohol or Drug Use Risk Reduction Program' means a program certified by the Department of Driver Services which consists of two components: assessment and intervention".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, the terms defined in this Code section were placed in alphabetical order and redesignated accordingly and at the end of the introductory language of paragraph (15) the quotation marks around "resident" were deleted.

Pursuant to Code Section 28-9-5, in 2001, "ZIP Code" was substituted for "ZIP code" in paragraph (13.5).

Editor's notes. — Ga. L. 1997, p. 760,

§ 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews. — For article on the effect of nolo contendere plea on conviction, see 13 Ga. L. Rev. 723 (1979). For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 196 (1997). For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

JUDICIAL DECISIONS

Definition of "conviction." — Definition of "conviction" clearly evidenced the legislature's intention that a bond forfeiture arising from driving under the influence of alcohol or drugs committed prior to the enactment of former Code 1933, § 6813-308, was considered a "conviction" for the purpose of that section. *Cofer v. Crowell*, 146 Ga. App. 639, 247 S.E.2d 152 (1978) (see O.C.G.A. § 40-5-58).

Neither state nor federal procedural due process bars General Assembly from defining "conviction" in former Code 1933, § 68B-101 to include forfeiture of bail or collateral. *Haley v. Hardison*, 247 Ga. 750, 279 S.E.2d 712 (1981) (see O.C.G.A. § 40-5-1).

Statutory definition of "conviction" does not carve out an exception for entries of pleas of guilty or the payment of a fine in a first offender situation. Nor does the definition require an adjudication of guilt. *Salomon v. Earp*, 190 Ga. App. 405, 379 S.E.2d 217 (1989), overruled on other grounds, *Pender v. Witcher*, 196 Ga. App. 856, 397 S.E.2d 193 (1990).

Definition of "conviction" found in O.C.G.A. § 40-5-1(6) is limited to traffic

violation charges. Entry of a guilty plea to a charge other than a traffic violation charge does not fit within the expansive definition of "conviction." *Priest v. State*, 261 Ga. 651, 409 S.E.2d 657 (1991).

Definition of "resident." — Reading paragraph (15) of O.C.G.A. § 40-5-1 and O.C.G.A. § 40-5-20(a) in pari materia shows that the intention of the General Assembly was not to exempt undocumented aliens from the requirement of obtaining a Georgia driver's license but to permit visitors with no intention of becoming "residents" to drive here without obtaining a Georgia license. *Diaz v. State*, 245 Ga. App. 380, 537 S.E.2d 784 (2000).

Illegal aliens. — Statutes barring illegal aliens residing in Georgia from obtaining a Georgia driver's license does not deprive the illegal aliens of equal protection of the laws in violation of the Fourteenth Amendment. *John Doe No. 1 v. Ga. Dep't of Pub. Safety*, 147 F. Supp. 2d 1369 (N.D. Ga. 2001).

Cited in *Martines v. Worley & Sons Constr.*, 278 Ga. App. 26, 628 S.E.2d 113 (2006); *Garcia-Carrillo v. State*, 322 Ga. App. 439, 746 S.E.2d 137 (2013).

RESEARCH REFERENCES

ALR. — Who is “owner” within statute making owner responsible for injury or death inflicted by operator of automobile, 74 ALR3d 739.

Validity of state statutes, regulations, or other identification requirements restricting or denying driver’s licenses to illegal aliens, 16 ALR6th 131.

40-5-2. Keeping of records of applications for licenses and information on licensees; furnishing of information.

(a) The department shall maintain records regarding the drivers’ licenses and permits issued by the department under this chapter. The drivers’ records maintained by the department shall include:

(1) A record of every application for a license received by it and suitable indexes containing:

(A) All applications granted; and

(B) The name of every licensee whose license has been canceled, suspended, or revoked by the department and after each such name shall note the reasons for such action;

(2) Drivers’ records received from other jurisdictions. Upon receipt of such driver’s record, it shall become a part of such driver’s record in this state and shall have the same force and effect as though entered on the driver’s record in this state in the original instance; and

(3) Records of all abstracts of court records of convictions of any offense listed in subsection (a) of Code Section 40-5-20, subsection (a) of Code Section 40-5-54, Code Section 40-6-10, driving on a suspended license in violation of Code Section 40-5-121, administrative license suspension pursuant to Code Sections 40-5-67 through 40-5-67.2, Code Section 40-5-75, Chapter 9 of this title, the “Motor Vehicle Safety Responsibility Act,” and Chapter 34 of Title 33, the “Georgia Motor Vehicle Accident Reparations Act,” any felony offense under this title, any offense committed while operating a commercial motor vehicle, serious traffic offenses, or other offenses requiring the assessment of points on the driving record that are received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee or individual showing the convictions of such licensee or individual and the traffic accidents in which such licensee or individual has been involved shall be readily ascertainable and available for the consideration of the department upon any application for, or application for renewal of, license and at other suitable times. For purposes of issuing a driver’s operating record to the public as provided in this Code section, the period of calculation

for compilation of such report shall be determined by the date of arrest.

(b) The records maintained by the department on individual drivers are exempt from any law of this state requiring that such records be open for public inspection; provided, however, that initial arrest reports, incident reports, and the records pertaining to investigations or prosecutions of criminal or unlawful activity shall be subject to disclosure pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72 and related provisions. Georgia Uniform Motor Vehicle Accident Reports shall be subject to disclosure pursuant to paragraph (5) of subsection (a) of Code Section 50-18-72. The department shall not make records or personal information available on any driver except as otherwise provided in this Code section or as otherwise specifically required by 18 U.S.C. Section 2721.

(c)(1) The driver's record provided by the department shall include an enumeration of any accidents in which the individual was convicted of a moving traffic violation, such moving traffic violation convictions, and information pertaining to financial responsibility. The department shall furnish a driver's operating record or personal information from a driver's record under the following circumstances:

(A) With the written instructions and consent of the driver upon whom the operating record has been made and compiled; such instructions and consent shall be signed by the driver but shall not be required to be notarized;

(B)(i) Pursuant to a written request or a request made in accordance with a contract with the Georgia Technology Authority for immediate on-line electronic furnishing of information, for use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting involving the driver; provided, however, that notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this division shall be limited to name, address, driver identification number, and medical or disability information. The person who makes a request for a driver's operating record shall identify himself or herself and shall have certified or affirmed that the information contained in the record will be used only for the purpose specified in the request. Further, the person making the request shall certify or affirm that he or she has on file an application for insurance or for the renewal or amendment thereof involving the driver or drivers; or

(ii) For the purpose of ascertaining necessary rating information by an insurance agent pursuant to an insurer's contract with

the Georgia Technology Authority for the immediate on-line electronic furnishing of limited rating information to such insurer's agents. Limited rating information furnished under this division shall include only the number of violations of Code Section 40-6-391, relating to driving under the influence of alcohol, drugs, or other intoxicating substances, and the number and type of other moving traffic violations which were committed by the proposed insured driver or drivers within the immediately preceding three or five years, which period shall be specified by the person making the request. The provisions of division (i) of this subparagraph notwithstanding, no other information concerning a driver's operating record shall be released to such agents for purposes of rating;

(B.1) The department shall implement a pilot program for 12 months to determine the revenue feasibility of supplying limited rating information to agents, insurers, and insurance support organizations. The department shall report the results of such pilot program to the Office of Planning and Budget. Unless the Office of Planning and Budget determines that the pilot program is not successful, the department shall continue the program on a year-to-year basis and furnish limited rating information to insurance support organizations for the same purposes as provided in division (ii) of subparagraph (B) of this paragraph, pursuant to a contract with the Georgia Technology Authority, provided that all other necessary requirements of this subsection have been met;

(C) In accordance with Article 7 of this chapter, the "Georgia Uniform Commercial Driver's License Act";

(D) To a judge, prosecuting official, or law enforcement agency for use in investigations or prosecutions of alleged criminal or unlawful activity, or to the driver's licensing agency of another state;

(E) Pursuant to a request from a public or private school system concerning any person currently employed or an applicant for employment as a school bus driver who agrees in writing to allow the department to release the information;

(F) With the written release of the driver, to a rental car company for use in the normal course of its business; provided, however, that notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this subparagraph shall be limited to name, address, driver identification number, and medical or disability information. Such access shall be provided and funded through the GeorgiaNet Division of the Georgia Technology Authority, and the department shall bear no costs associated with such access; and

(G) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(i) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(ii) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

provided, however, that notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this subparagraph shall be limited to name, address, and driver identification number and shall not include photographs, fingerprints, computer images, or medical or disability information. The personal information obtained by a business under this subparagraph shall not be resold or redisclosed for any other purpose without the written consent of the individual. Furnishing of information to a business under this subparagraph shall be pursuant to a contract entered into by such business and the state which specifies, without limitation, the consideration to be paid by such business to the state for such information and the frequency of updates.

(2) Nothing in this Code section shall preclude the department from confirming or verifying the status of a driver's license or permit.

(d)(1) The commissioner shall designate members of the department to be the official custodians of the records of the department. No disclosure or release of operating records or personal information shall be made without the signed written approval of a designated custodian; except that such approval shall not be required for any release or disclosure through the GeorgiaNet Division of the Georgia Technology Authority pursuant to the signed written consent of the driver, provided that any such signed written consent shall be retained for a period of not less than four years by the party requesting the information; and except that such approval shall not be required for any release or disclosure of information made electronically through the GeorgiaNet Division of the Georgia Technology Authority in accordance with a contract authorized by subparagraph (c)(1)(B) of this Code section. The custodians may certify copies or compilations, including extracts thereof, of the records of the department.

(2) In response to a subpoena or upon the request of any judicial official, the department shall provide a duly authenticated copy of

any record or other document. This authenticated copy may consist of a photocopy or computer printout of the requested document certified by the commissioner or the commissioner's duly authorized representative.

(e) Upon written request, the department may provide copies of any record or personal information from any driver's record for use by any appropriate governmental official, entity, or agency for the purposes of carrying out official governmental functions or legitimate governmental duties; provided, however, that notwithstanding the definition of personal information under Code Section 40-5-1, personal information furnished under this subsection shall be limited to name, address, driver identification number, and medical or disability information.

(f) The department is specifically authorized to disseminate the following records and information:

(1) To the United States Selective Service System and the Georgia Crime Information Center, compilations of the names, most current addresses, license or identification card numbers, and dates of birth of licensees or applicants for licenses or applicants for or holders of identification cards issued under this chapter, or, in the case of the United States Selective Service System, any other information from the license or identification card application as necessary for purposes of registration of persons therewith. Such information shall only be used in the fulfillment of the legitimate governmental duties of the United States Selective Service System and the Georgia Crime Information Center and shall not be further disseminated to any person. Information transmitted to the United States Selective Service System pursuant to this paragraph shall be provided in an electronic format;

(2) To the military branches of the United States Department of Defense, compilations of the names, dates of birth, sex, and most current addresses of licensees between the ages of 16 and 24 for the sole purpose of mailing recruiting and job opportunity information, provided that the department shall not be required to provide such a compilation more than once every two months;

(3) To the Department of Human Services, compilations of the names, dates of birth, and most current addresses of licensees or applicants for licenses. Any information provided pursuant to this subsection shall only be used by the Department of Human Services in connection with the recovery of delinquent child support payments under Article 1 of Chapter 11 of Title 19, known as the "Child Support Recovery Act";

(4) To a local fire or law enforcement department, a copy of the abstract of the driving record of any applicant for employment or any

current employee and to the Georgia Bureau of Investigation for the purpose of providing a local fire or law enforcement department with the abstract through the Criminal Justice Information System. It shall be unlawful for any person who receives an abstract of the driving record of an individual under this subsection to disclose any information pertaining to such abstract or to make any use thereof except in the performance of official duties with the local fire or law enforcement department;

(5) The information required to be made available to organ procurement organizations pursuant to subsection (d) of Code Section 40-5-25 and for the purposes set forth in such Code section;

(6)(A) The information required to be made available regarding voter registration pursuant to Code Sections 21-2-221 and 21-2-221.2 and for the purposes set forth in such Code sections; and

(B) Information sufficient for use in verifying a registered voter's identity or the identity of an applicant for voter registration by the Secretary of State, the county election superintendent, or the county registrar, including name, address, date of birth, gender, driver identification number, photograph, and signature;

(7) The data required to be made available to The Council of Superior Court Clerks of Georgia and the Administrative Office of the Courts pursuant to Code Section 15-12-40.1. Such data shall be provided to The Council of Superior Court Clerks of Georgia and the Administrative Office of the Courts upon request in the electronic format required by the council for such purposes and without any charge for such data; and

(8) To the Department of Revenue, information sufficient for use in the detection and prevention of fraudulent tax returns, including name, address, date of birth, gender, driver identification number, photograph, and signature. Such information may be provided in electronic format by means of bulk transfer. Any information provided pursuant to this paragraph shall only be used by the Department of Revenue in connection with the detection and prevention of fraudulent tax returns.

(g) The drivers' records and personal information disseminated by the department pursuant to this Code section may be used only by the authorized recipient and only for the authorized purpose. It shall be unlawful to disclose, distribute, or sell such records or information to an unauthorized recipient or for an unauthorized purpose. It shall be a violation of this Code section to make a misrepresentation or false statement in order to obtain access to or information from the department's records. Any person who knowingly and willfully violates the provisions of this Code section shall be guilty of a misdemeanor of a

high and aggravated nature and, upon conviction thereof, shall be punished as provided in Code Section 17-10-4.

(h) The department shall maintain for four years a record of each release of a driver's operating record or personal information, including the name and address of the requesting party, the date of the release, and the provision of law authorizing the release. Such record of releases shall be reported to the affected driver upon written application by the driver, except that the department shall not report any information about the existence of a release made in connection with a criminal investigation which is ongoing and which involves, though not necessarily focuses upon, such driver. Upon receipt of an application from a driver for such record of releases, the department shall have three business days to determine whether an ongoing criminal investigation is involved, and such determination shall be in the discretion of the commissioner. Where a release is not reported to a driver because the underlying release involved an ongoing criminal investigation, the records concerning the underlying release shall be maintained for four years after the criminal investigation is closed and such records shall during such period after closure of the investigation be subject to disclosure upon application by the driver.

(i) The provisions of this Code section shall apply, where relevant, to the maintenance and disclosure of the department's records regarding state identification cards issued under Article 5 of this chapter.

(j) The commissioner is authorized to promulgate any rules, regulations, or policies as are necessary to carry out the provisions of this Code section, including the promulgation of regulations limiting the retention of conviction and withdrawal information on a driving record. Notwithstanding the foregoing, any regulation relating to the retention of conviction and withdrawal information on a driving record shall apply the same retention schedule to both commercial and noncommercial drivers. In accordance with paragraph (6) of subsection (a) of Code Section 50-25-4, reasonable fees shall be assessed for furnishing information from records or data bases pursuant to provisions of this Code section; provided, however, that the fee for furnishing an abstract of a driver's record shall not exceed \$10.00.

(k)(1) The department, pursuant to rules and regulations promulgated by the commissioner, may periodically review all records maintained pursuant to this Code section and shall correct those records which contain known improper, false, fraudulent, or invalid information.

(2) Not later than July 31, 2006, the department shall destroy all records of fingerprints obtained on and after April 15, 1996, and prior to July 1, 2006, from applicants for drivers' licenses, identification

cards, and identification cards for persons with disabilities issued by the department and shall compile and make available for public inspection a list of all persons or entities to whom the department provided such fingerprint records. Notwithstanding the provisions of this paragraph, fingerprint images electronically stored on existing drivers' licenses will be destroyed upon application for a renewal of the driver's license.

(l) In any case in which the release or transmittal of one or more driver's records is authorized under this Code section or any other provision of law, the commissioner may determine the method of release or transmittal of the record or records, including without limitation release or transmittal by mail or by means of the Internet or other electronic means. (Ga. L. 1937, p. 322, art. 4, § 13; Ga. L. 1939, p. 135, § 12; Code 1933, § 68B-215, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1978, p. 920, § 1; Ga. L. 1979, p. 142, § 1; Ga. L. 1980, p. 917, §§ 1, 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 1182, § 1; Ga. L. 1985, p. 1339, § 1; Ga. L. 1986, p. 156, § 1; Ga. L. 1986, p. 514, § 1; Ga. L. 1988, p. 470, § 1; Ga. L. 1988, p. 687, § 1; Ga. L. 1989, p. 519, § 3; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1870, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1995, p. 917, § 1; Ga. L. 1996, p. 6, § 40; Ga. L. 1996, p. 1061, § 1; Ga. L. 1996, p. 1624, § 5; Ga. L. 1997, p. 1446, § 2; Ga. L. 1999, p. 809, § 3; Ga. L. 2000, p. 249, § 2; Ga. L. 2000, p. 429, § 3; Ga. L. 2000, p. 951, § 5-2; Ga. L. 2001, p. 294, § 2; Ga. L. 2001, Ex. Sess., p. 318, § 1-2; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 749, § 2; Ga. L. 2005, p. 60, § 40/HB 95; Ga. L. 2005, p. 334, § 17-2/HB 501; Ga. L. 2005, p. 465, § 1/HB 151; Ga. L. 2005, p. 1122, § 1/HB 577; Ga. L. 2006, p. 432, §§ 1, 2/HB 513; Ga. L. 2006, p. 449, § 1/HB 1253; Ga. L. 2006, p. 897, § 2/HB 1417; Ga. L. 2008, p. 171, § 1/HB 1111; Ga. L. 2008, p. 1137, § 1/SB 350; Ga. L. 2009, p. 327, § 2/HB 549; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 932, § 1.1/HB 396; Ga. L. 2011, p. 59, § 1-66/HB 415; Ga. L. 2011, p. 99, § 57/HB 24; Ga. L. 2012, p. 218, § 11/HB 397; Ga. L. 2012, p. 804, § 4/HB 985; Ga. L. 2012, p. 995, § 44/SB 92; Ga. L. 2014, p. 451, § 12/HB 776; Ga. L. 2014, p. 851, § 5/HB 774.)

The 2012 amendments. — The first 2012 amendment, effective April 17, 2012, substituted “paragraph (5)” for “paragraph (4.1)” in the second sentence of subsection (b). The second 2012 amendment, effective May 2, 2012, substituted “Code Sections 21-2-221 and 21-2-221.2” for “Code Section 21-2-221” in subparagraph (f)(6)(A); and inserted “or the identity of an applicant for voter registration” near the beginning of subparagraph (f)(6)(B). The third 2012 amendment, effective July 1, 2012, deleted “and” from

the end of subparagraph (f)(6)(B); substituted “; and” for a period at the end of paragraph (f)(7); and added paragraph (f)(8).

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, substituted the present provisions of paragraph (f)(7) for the former provisions, which read: “The lists required to be made available to boards of jury commissioners, the Council of Superior Court Clerks of Georgia, and the Administrative Office of the Courts pursuant to Code Section

15-12-40 or 15-12-40.1 regarding county residents who are the holders of drivers' licenses or personal identification cards issued pursuant to this chapter. Such lists shall identify each such person by name, address, date of birth, and gender, and, whenever racial and ethnic information is collected by the department for purposes of voter registration pursuant to Code Section 21-2-221, the department shall also provide such information. The department shall also provide the address, effective date, document issue date, and document expiration date and shall indicate whether the document is a driver's license or a personal identification card. Such information shall be provided to the Council of Superior Court Clerks of Georgia and the Administrative Office of the Courts upon request in the electronic format required by the council for such purposes and without any charge for such data; and". The second 2014 amendment, effective July 1, 2014, deleted "accident reports and" following "Records of all" near the beginning of paragraph (a)(3).

Code Commission notes. — Ga. L. 1986, p. 156, § 1 and Ga. L. 1986, p. 514, § 1 both redesignated former subsection (g) as new subsection (h), added differing subsection (g)'s to this Code section, and effected identical amendments to new subsection (h). Pursuant to Code Section 28-9-5, the subsection (g) added by the former Act retained that designation, the subsection (g) added by the latter Act was redesignated as subsection (h) and former subsection (g) was redesignated as subsection (i).

Pursuant to Code Section 28-9-5, in 2000, "Georgia Technology Authority" was substituted for "GeorgiaNet Authority" in divisions (c)(1)(B)(i) and (c)(1)(B)(ii) and "GeorgiaNet Division of the Georgia Technology Authority" was substituted for "GeorgiaNet Authority" in paragraph (d)(1).

Pursuant to Code Section 28-9-5, in 2005, in the first sentence of paragraph (k)(1) (now paragraph (k)(2)), "July 31, 2006" was substituted for "30 days after the effective date of this paragraph" and "July 1, 2006," was substituted for "the effective date of this paragraph".

Editor's notes. — Ga. L. 1999, p. 809, § 1, not codified by the General Assembly,

sets forth findings supporting restriction of access to Georgia Uniform Motor Vehicle Accident Reports as necessary for combating privacy invasion and financial identity fraud.

Ga. L. 2000, p. 429, § 1, not codified by the General Assembly, provides: "(a) The General Assembly finds that a significant number of motor vehicle owners in this state fail to meet the requirements of existing law for minimum motor vehicle liability insurance. The General Assembly finds further that enforcement of such requirements is made difficult by existing methods and procedures for tracking insurance coverage and providing proof of insurance.

"(b) The General Assembly declares that the purpose of this Act is to improve enforcement of minimum motor vehicle liability insurance requirements by providing the Department of Public Safety with updated information from insurers regarding those vehicles for which minimum motor vehicle liability insurance coverage is in effect, which information may be made accessible to law enforcement officers throughout the state, all without hampering the underwriting activities of any insurer or changing existing penalties for operating a motor vehicle without minimum liability insurance coverage."

Ga. L. 2001, p. 294, § 1, not codified by the General Assembly, provides: "The General Assembly finds and declares as follows:

"(1) Military service of citizens of this state in the armed forces of the United States has been and will remain a critical contribution to the national defense;

"(2) The United States Selective Service System plays a crucial role in ensuring that the nation can rapidly call up citizens for military duty in time of need;

"(3) Certain persons are required by federal law to register with the United States Selective Service System;

"(4) Significant and detrimental consequences imposed by law await those who shun their duty and fail to register for the United States Selective Service System as required, including loss of eligibility for certain government programs and employment; and

"(5) The purpose of this Act is to support the national defense by promoting registration of certain Georgia residents with the United States Selective Service System as required by federal law."

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

JUDICIAL DECISIONS

No First Amendment right to accident reports. — Private investigator seeking information for commercial solicitation has no First Amendment constitutional right of special access to motor vehicle accident reports. *Spottsville v. Barnes*, 135 F. Supp. 2d 1316 (N.D. Ga. 2001).

Photograph of criminal obtained lawfully under former subsection (e). — Former subsection (e) authorized the department to provide a copy of any driver's license to any law enforcement agency; thus, the photograph of a criminal was obtained lawfully. *Davis v. State*, 155 Ga. App. 511, 271 S.E.2d 648 (1980).

Records certified by custodians of department. — In view of the 1980 amendment to present subsection (f) of O.C.G.A. § 40-5-2, the *Blackmon v. State*, 153 Ga. App. 359, 265 S.E.2d 320 (1980), case is no longer controlling; and records of the department are certified by the custodians of the department and not necessarily by only a single individual empowered to do so. *Kimbrell v. State*, 164 Ga. App. 344, 296 S.E.2d 206 (1982).

Certified record admissible. — Certified Department of Public Safety record showing that defendant had been notified of defendant's status as a habitual violator was admissible. *Corbin v. State*, 225 Ga. App. 269, 483 S.E.2d 678 (1997).

Certified copies of the Department of Public Safety's "Official Notice of Revocation" and "Official Notice of Revocation and Service by Court" were admissible

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 196 (1997). For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

For note on 1999 amendment to this Code section, see 16 Georgia. St. U.L. Rev. 268 (1999). For note on the 2001 amendment of this Code section, see 18 Ga. St. U.L. Rev. 220 (2001).

evidence. *Shapiro v. State*, 233 Ga. App. 620, 504 S.E.2d 719 (1998).

Admissibility of computer printout. — There being no contention that a computer printout was not properly certified, the printout was admissible prima facie at the sentencing hearing. *Niehaus v. State*, 149 Ga. App. 575, 254 S.E.2d 895 (1979).

Certified copy of a department computer printout showing pertinent convictions is admissible without the printout's reliability or trustworthiness having to be established, although the defendant has the right to show that the printout is untrustworthy and thus diminish the printout's credibility or persuade the court not to admit the printout. *Love v. Hardison*, 166 Ga. App. 677, 305 S.E.2d 420 (1983).

Duplicate uniform traffic citation forms. — Duplicate uniform traffic citation forms signed by a judge and certified by the Department of Public Safety were properly considered by the department and the superior court in determining whether defendant was a habitual violator. *Gill v. Bowman*, 201 Ga. App. 308, 410 S.E.2d 780, cert. denied, 201 Ga. App. 903, 410 S.E.2d 780 (1991).

"Best evidence" objection. — When certification of document is not challenged, the "best evidence" objection has no merit. *Henson v. State*, 168 Ga. App. 210, 308 S.E.2d 555 (1983); *McFarland v. State*, 210 Ga. App. 426, 436 S.E.2d 541 (1993).

Certification by officially designated custodian. — When notices of

suspension were certified by a member of the department designated as the official custodian by the commissioner, this clearly complied with subsection (e) of O.C.G.A. § 40-5-2 as to admissibility. *Smith v. State*, 187 Ga. App. 322, 370 S.E.2d 185 (1988).

Cited in *Magruder v. Cofer*, 153 Ga. App. 7, 264 S.E.2d 506 (1980); *Hight v. State*, 153 Ga. App. 196, 264 S.E.2d 717 (1980); *Moon v. State*, 156 Ga. App. 877, 275 S.E.2d 813 (1981); *Wallace v. State*,

158 Ga. App. 338, 280 S.E.2d 385 (1981); *Milner v. State*, 159 Ga. App. 887, 285 S.E.2d 602 (1981); *Hill v. State*, 162 Ga. App. 637, 292 S.E.2d 512 (1982); *Todd v. State*, 163 Ga. App. 814, 294 S.E.2d 714 (1982); *Noles v. State*, 164 Ga. App. 191, 296 S.E.2d 768 (1982); *Cook v. State*, 180 Ga. App. 877, 350 S.E.2d 847 (1986); *Ragan v. State*, 264 Ga. 190, 442 S.E.2d 750 (1994); *Valentine v. State*, 229 Ga. App. 791, 495 S.E.2d 116 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Language that abstract of driver's operating record not certified.

— There was no prohibition to adding language sufficient to place law enforcement agencies on notice that an abstract of a driver's operating record was not certified; the following language should be added to each abstract furnished pursuant to former Code 1933, § 68B-215: "This is not a certified copy and should be used for informational purposes only." 1976 Op. Att'y Gen. No. 76-107 (see O.C.G.A. § 40-5-2).

Access to records. — Department of Public Safety may furnish, upon appropriate request, such information on drivers' records as does not violate the prohibition contained in O.C.G.A. § 40-5-2, including information contained on such documents

as nunc pro tunc orders amending or correcting prior convictions or sentences affecting licensees; furthermore, because of the additional financial burden which this may place upon the department, reasonable costs incurred in furnishing the information sought may be charged. 1984 Op. Att'y Gen. No. 84-1.

Electronic transfer of records of convictions. — Because a citation serves as the formal accusation against a convicted driver, local jurisdictions may transmit traffic ticket information electronically to the Department of Public Safety, but not as a substitute for sending the citation copy. The uniform traffic citation must also be forwarded to the department. 1991 Op. Att'y Gen. No. U91-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 103.

40-5-3. Department employees to be appointed as notaries public.

The commissioner shall cause designated employees of the department to be appointed as notaries public, in accordance with Chapter 17 of Title 45, for the purpose of performing the notarial acts required by this chapter, free of charge to applicants. (Code 1933, § 68B-207, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.)

40-5-4. Authority of commissioner to promulgate rules and regulations.

(a) The commissioner is authorized to implement any and all provisions of this chapter by the promulgation of necessary rules and

regulations. An express grant of authority to the commissioner in any Code section to promulgate regulations shall not be construed as excluding such authority in any other Code section.

(b) When duly promulgated and adopted, all regulations issued pursuant to this chapter shall have the force of law. (Ga. L. 1937, p. 322, art. 4, § 10; Ga. L. 1943, p. 196, § 5; Ga. L. 1951, p. 598, § 7; Code 1933, § 68B-501, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-3.)

40-5-4.1. Authorized delay in compliance with federal Real ID Act.

The Governor of the State of Georgia, or his or her designee, is authorized to delay compliance with certain provisions of the federal Real ID Act, H.R. 1268, P.L. 109-13, enacted by Congress in 2005, until it is expressly guaranteed by the Department of Homeland Security, through adequately defined safeguards, that implementation of the Real ID Act will not compromise the economic privacy or biological sanctity of any citizen or resident of the State of Georgia. This Code section shall not be interpreted as limiting the Governor's discretion or authority to delay compliance with certain provisions of the Real ID Act for any other reason. (Code 1981, § 40-5-4.1, enacted by Ga. L. 2007, p. 27, § 2/SB 5.)

Editor's notes. — Ga. L. 2007, p. 27, § 1/SB 5, not codified by the General Assembly, provides: "The General Assembly of Georgia finds that the Real ID Act, H.R. 1268, P.L. 109-13, enacted by Congress in 2005, established standards that state-issued drivers' licenses and identification cards must meet by May 11, 2008, if the licenses or identification cards are to be accepted as valid identification by the federal government. After May 11, 2008, federal agencies are scheduled to accept only drivers' licenses or identification cards that meet Real ID standards. Non-compliant cards will not be accepted for federal purposes such as boarding a domestic flight, opening a bank account, or any other service or activity over which the federal government claims jurisdiction. Each state will also be required to share data from their drivers' licenses or identification cards data base with other states. The exact requirements of the Real ID Act have yet to be defined. The Department of Homeland Security was originally going to promulgate regulations by No-

vember, 2005. That date was changed to November, 2006. Currently, regulations are scheduled for January, 2007, but many parties feel this deadline may also pass without the regulations being issued.

"Because the Real ID Act was attached to a vital supplemental spending bill for defense and tsunami relief, there was no opportunity for a full examination of the consequences of the proposal. While everyone recognizes the need to make identifying documents as secure as is humanly possible, the one-size-fits-all approach required by the Real ID Act may actually increase the documents' vulnerability to counterfeiting. If criminals are able to invade one state's system, they may have access to all states' systems. On another front, a report from the National Conference of State Legislatures, the National Governors Association, and the American Association of Motor Vehicle Administrators suggests that the new requirements of the Real ID Act will cost states at least \$11 billion over the first five years of the program. Despite this massive price tag,

there has been no money appropriated to help states meet the law's demands.

"The Real ID Act gives the Department of Homeland Security the power to set federal standards and determine whether state drivers' licenses and other identification cards meet these standards. There is no provision in the Real ID Act that requires or even mentions information privacy or data security. The federal and state governments must ensure that the data needed to verify the identity of driver's license applicants is maintained securely and not used for other unrelated purposes. The Department of Homeland Security must include privacy protections for personal driver data as they promulgate regulations spelling out what states need to do to implement the federal law. Success of the Real ID Act depends on the Department of Homeland Security and the states collaborating to find a way of implementing its requirements in a fiscally responsible and risk adjusted manner. Therefore, the Georgia Department of Driver Services is directed to withhold any legislation designed to implement the Real ID Act in Georgia until such time as the Department of Homeland Security has

enacted regulations that define the exact type of information that is to be required on a state driver's license. Furthermore, before the Real ID Act is implemented in Georgia, the Governor of Georgia is entitled to review the regulations promulgated by the Department of Homeland Security and determine if they adequately safeguard and restrict use of the information in order to protect the privacy rights of the citizens of Georgia.

"The citizens of Georgia also recognize the importance of ensuring that drivers' licenses are issued only to persons legally present in this state. Therefore, the use of secure and verifiable identification will be required in this state in order to obtain a driver's license. This requirement is in harmony with the intent of the Real ID Act to secure identification processes in this country. The Department of Driver Services is instructed to take the necessary steps to become a participant in the SAVE Program (Systematic Alien Verification for Entitlements). This program, administered by the United States Bureau of Citizenship and Immigration Services, is designed to verify the immigration status of noncitizens."

40-5-5. Authority of Governor to execute binding reciprocal agreements regarding operation of motor vehicles; publication of terms of agreements; rules and regulations; exemption for certain foreign citizens.

(a) The Governor is authorized and directed to negotiate and consummate, with the proper authorities of the several states of the United States, the District of Columbia, and the territories and possessions of the United States, valid and binding reciprocal agreements whereby residents of such states, the District of Columbia, and the territories and possessions of the United States operating motor vehicles properly licensed and registered in their respective jurisdictions may have the same or substantially the same privileges or exemptions in the operation of their motor vehicles in this state as residents of this state may have and enjoy in the operation in such other jurisdictions of their motor vehicles properly licensed and registered in this state. Notwithstanding any provision of law to the contrary, the Governor may likewise negotiate and consummate valid and binding reciprocal agreements with the proper authorities of said jurisdictions relating to the suspension, revocation, cancellation, and reinstatement of motor vehicle drivers' licenses. In the making of such agreements, due regard shall

be had for the benefit and convenience of the motor vehicle owners and other citizens of this state. The Governor may adopt and promulgate such rules and regulations as shall be necessary to effectuate and administer the provisions of this Code section.

(b) The Governor or a commission appointed by him shall give proper publicity to the terms of every reciprocal agreement entered into by him pursuant to this chapter; and he is authorized and empowered to promulgate rules and regulations for observance and enforcement of the terms of such agreement, which rules and regulations shall have the force and effect of law.

(c) The commissioner is authorized to negotiate and enter into an agreement with a foreign country that exempts the citizens of such foreign country from the knowledge test and the on-the-road driving test required in Code Section 40-5-27 so long as the citizen holds a valid driver's license of an equivalent class issued by such foreign country; provided, however, that no such agreement shall be entered into unless the foreign country offers the same reciprocity to persons holding a valid driver's license of an equivalent class issued by the State of Georgia and the commissioner determines that the laws of such foreign country relating to the operation of motor vehicles are sufficiently similar to such laws of this state such that driving safety shall not be compromised; and provided, further, that no such agreement shall be entered into unless the Department of Economic Development has certified that persons or entities from such country have made or are likely to make a substantial economic investment in this state that has or will lead to the substantial creation of jobs in this state. The provisions of this subsection notwithstanding, the department shall not be authorized to enter into any reciprocal agreement with any foreign country that is designated as a state sponsor of terrorism by the United States Department of State. The exemption provided for in this subsection shall not be an exemption from any other legal requirement for the issuance of a driver's license, including the requirement that the applicant demonstrate lawful presence within the United States in accordance with Code Sections 40-5-21.1 and 40-5-21.2. This subsection shall not apply to citizens of foreign countries applying for a commercial driver's license or Class M driver's license.

(d) The department shall make a notation on any driver's license, permit, identification card, or other state identifying document issued by the department pursuant to this Code section. The notation shall be in a manner approved by the department and shall state "Limited Term" or such other notation as determined by the department. Nothing contained in this subsection shall preclude the department from making the same or similar notations on other similarly issued identifying documents. Any driver's license or other identifying document that is so

noted shall not be used as voter identification. (Ga. L. 1937-38, Ex. Sess., p. 617, §§ 1, 5; Ga. L. 1941, p. 361, §§ 2, 5; Ga. L. 1959, p. 25, § 1; Ga. L. 1973, p. 559, § 1; Ga. L. 1976, p. 198, § 1; Ga. L. 1979, p. 1015, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 2013, p. 281, § 1/HB 475.)

The 2013 amendment, effective July 1, 2013, added subsections (c) and (d).

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

Editor's notes. — The Department of Driver Services is the depository for the

reciprocal agreements referred to in this Code section. These agreements are available for examination upon request.

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 203 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Reciprocity determined by examining agreement. — In order to determine whether or not a motor vehicle is entitled to reciprocity while operating in Georgia, it is necessary to examine the reciprocity agreement that this state has with the state in which that vehicle is based. 1965-66 Op. Att'y Gen. No. 66-227.

Licensing authorities' conduct towards out-of-state truck lines. — Conduct of the licensing authorities of Georgia in relation to out-of-state truck lines operating in Georgia depends wholly and entirely upon the conduct of the mother state of the trucking association, that is, the state under whose laws the trucking association is operating; the reciprocal agreement between that state and the State of Georgia determines acts of the state agents in either requiring or not requiring the trucks to obtain a Georgia for hire tag. 1950-51 Op. Att'y Gen. p. 188.

Imposition of highway use tax against another state. — Truck or trailer must carry the license plate of the state from which the truck or trailer operates and should not be allowed to carry

plates of other states; however, if the trucks or trailers do operate with license plates from more than one state and one of the states imposes a highway use tax and is not in reciprocity with the State of Georgia, then the tax imposed under Ga. L. 1953, Nov.-Dec. Sess., p. 343, Pt. 2, § 5 is applicable to that truck or trailer. 1954-56 Op. Att'y Gen. p. 475 (see O.C.G.A. § 40-2-110 et seq.).

Entitlement to reduction in highway use tax. — Trailers liable for highway use tax are not entitled to reduction in this tax under Ga. L. 1937-38, Ex. Sess., p. 259 (see now O.C.G.A. § 40-2-151). 1954-56 Op. Att'y Gen. p. 476.

Trial of violators. — Ga. L. 1953, Nov.-Dec. Sess., p. 343, Pt. 2, § 6 (see O.C.G.A. § 40-2-114(a)(4)) contemplates a trial by jury and a conviction or acquittal of persons accused of violating Ga. L. 1953, Nov.-Dec. Sess., p. 343, Pt. 2, § 5 (see Art. 5, Ch. 2, T. 40); therefore, it would be necessary for a warrant to be sworn out against an alleged violator and a trial held in a court with appropriate jurisdiction. 1954-56 Op. Att'y Gen. p. 476.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 62 et seq., 92, 113 et seq. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 1158 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 186, 187. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 5.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 24, 25, 28 et seq., 192, 309, 379 et seq. 61A C.J.S., Motor Vehicles, § 1482.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

40-5-6. Forms for making of anatomical gifts upon issuance or renewal of driver's license.

(a) Whenever any person applies for or requests the issuance, reissuance, or renewal of any class of driver's license, the department shall furnish that person with a form, sufficient under Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act," for the gift of all or part of the donor's body conditioned upon the donor's death. If any such person, legally authorized to execute such a gift, desires to execute a gift, the department shall provide that person with appropriate assistance and the presence of the legally required number of witnesses.

(b) A notation shall be affixed to or made a part of every driver's license issued in this state indicating whether or not the licensee has executed, under Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act," a gift, by will or otherwise, of all or part of his body conditioned upon the donor's death. (Ga. L. 1974, p. 1117, §§ 1, 2; Code 1981, § 40-5-7; Code 1981, § 40-5-6, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 2008, p. 503, § 4/SB 405.)

Cross references. — Donation of human eyes to eye banks, T. 31, C. 23. Anatomical gifts, T. 44, C. 5, A. 6.

Editor's notes. — Former Code Section 40-5-6, relating to mailing of notice by the department, was based on Ga. L. 1975, p. 1008, and was repealed by Ga. L. 1989, p. 519, § 4, effective April 10, 1989.

Law reviews. — For article, "Medical Decision-Making in Georgia," see 10 Ga. St. B.J. 50 (No. 7, 2005). For survey article on wills, trusts, guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008).

40-5-7. Blue Ribbon Young Driver and DUI Study Commission; creation; membership; purpose; meetings; compensation; reports to Governor and General Assembly; termination.

Reserved. Repealed by Ga. L. 2001, p. 208, § 1-0, effective December 1, 2002.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, Code Section 40-5-7, as enacted by Ga. L. 2001, p. 294, § 3, was redesignated as Code Section 40-5-8.

Pursuant to Code Section 28-9-5, in 2003, this Code section designation was reserved.

Editor's notes. — This Code section was based on Ga. L. 2001, p. 208, § 1-0.

40-5-8. Registration of applicants with United States Selective Service System; notification that signature constitutes consent.

(a) Any male United States citizen or immigrant who applies for any driver's license or identification card issued under this chapter, includ-

ing without limitation any instruction permit, limited driving permit, provisional driver's license, or commercial driver's license, or for renewal thereof, and who is less than 26 years of age shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 App. U.S.C.A. Section 451, et seq., as amended.

(b) The signature of any applicant described in subsection (a) of this Code section submitted to the department in application for such license or identification card issuance or renewal shall serve as an indication that the applicant either has registered already with the United States Selective Service System or that he is authorizing the department to forward to the United States Selective Service System the necessary information for such registration. The department shall notify the applicant at the time of application that his signature constitutes consent to be registered with the United States Selective Service System if he is not already so registered. The department shall, as soon as practical following such application and in accordance with paragraph (1) of subsection (f) of Code Section 40-5-2, forward the necessary personal information of the applicant to the United States Selective Service System for purposes of registration therewith at such time as required by federal law. (Code 1981, § 40-5-8, enacted by Ga. L. 2001, p. 294, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, Code Section 40-5-7, as enacted by Ga. L. 2001, p. 294, § 3, was redesignated as Code Section 40-5-8.

Editor's notes. — Ga. L. 2001, p. 294, § 1, not codified by the General Assembly, provides: "The General Assembly finds and declares as follows:

"(1) Military service of citizens of this state in the armed forces of the United States has been and will remain a critical contribution to the national defense;

"(2) The United States Selective Service System plays a crucial role in ensuring that the nation can rapidly call up citizens for military duty in time of need;

"(3) Certain persons are required by federal law to register with the United States Selective Service System;

"(4) Significant and detrimental consequences imposed by law await those who shun their duty and fail to register for the United States Selective Service System as required, including loss of eligibility for certain government programs and employment; and

"(5) The purpose of this Act is to support the national defense by promoting registration of certain Georgia residents with the United States Selective Service System as required by federal law."

ARTICLE 2

ISSUANCE, EXPIRATION, AND RENEWAL OF LICENSES

Administrative rules and regulations. — Renewals, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Chapter 375-3-2.

Driver Training Schools, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver Training and Driver Improvement, Chapter 375-5-2.

RESEARCH REFERENCES

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 ALR 532; 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375; 53 ALR2d 850.

Validity of statute or ordinance relating to granting or revocation of license or

permit to operate automobile, 71 ALR 616; 108 ALR 1162; 125 ALR 1459.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 ALR2d 850.

State's liability to one injured by improperly licensed driver, 41 ALR4th 111.

40-5-20. License required; surrender of prior licenses; local licenses prohibited.

(a) No person, except those expressly exempted in this chapter or in Chapter 6 of this title, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license under this chapter for the type or class of vehicle being driven. Any person who is a resident of this state for 30 days shall obtain a Georgia driver's license before operating a motor vehicle in this state. Any court having jurisdiction over traffic offenses in this state shall report to the department the name and other identifying information of any individual convicted of driving without a license. This Code section shall not apply to a person driving with a suspended license or license that has been revoked. Any person convicted of violating this Code section shall be punished as provided in subsection (a) of Code Section 40-5-121; provided, however, that if:

(1) Such person is driving with a driver's license issued by this state that has been expired for less than 31 days at the time of the offense and he or she produces in court a driver's license that would have been valid at the time of the offense, he or she shall not be guilty of such offense; and

(2) Such person is driving without a valid driver's license or receipt issued by the department reflecting issuance, renewal, replacement, or reinstatement in his or her possession but he or she has a valid driver's license, Code Section 40-5-29 shall apply to such offense.

(b) No person, except those expressly exempted in this chapter, shall steer or, while within the passenger compartment of such vehicle, exercise any degree of physical control of a vehicle being towed by a motor vehicle upon a highway in this state unless such person has a valid driver's license under this chapter for the type or class of vehicle being towed.

(c)(1) Except as provided in paragraph (2) of this subsection and in Code Section 40-5-32, no person shall receive a driver's license unless and until such person surrenders to the department all valid licenses

in such person's possession issued to him or her by this or any other jurisdiction. All surrendered licenses issued by another jurisdiction shall be destroyed. The license information shall be forwarded to the previous jurisdiction. No person shall be permitted to have more than one valid driver's license at any time.

(2) Any noncitizen who is eligible for issuance of a driver's license pursuant to the requirements of this chapter may be issued a driver's license without surrendering any driver's license previously issued to him or her by any foreign jurisdiction. This exemption shall not apply to a person who is applying for a commercial driver's license or who is required to terminate any previously issued driver's license pursuant to federal law. The department shall make a notation on the driving record of any person who retains a foreign driver's license, and this information shall be made available to law enforcement officers and agencies on such person's driving record through the Georgia Crime Information Center.

(d) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipality, or local board or body having authority to adopt local police regulations. (Code 1933, § 68B-201, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1996, p. 1250, § 2; Ga. L. 2002, p. 1045, § 1; Ga. L. 2008, p. 1137, § 2/SB 350; Ga. L. 2008, p. 1154, § 1/SB 488; Ga. L. 2009, p. 65, § 1/SB 196; Ga. L. 2014, p. 710, § 2-1/SB 298; Ga. L. 2014, p. 745, § 7/HB 877.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in subsection (a), deleted the former third sentence, which read: "Any violation of this subsection shall be punished as provided in Code Section 40-5-121, except the violation of driving with an expired license, or a violation of Code Section 40-5-29 or if such person produces in court a valid driver's license issued by this state

to such person, he or she shall not be guilty of such offenses.", and added the fourth and fifth sentences, and added paragraphs (a)(1) and (a)(2). The second 2014 amendment, effective July 1, 2014, inserted "or in Chapter 6 of this title" near the beginning of subsection (a).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 277 (2002).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937, p. 322 are included in the annotations for this Code section.

Applicability to residents and non-residents. — Because O.C.G.A. § 40-5-20 prohibits both residents and nonresidents from driving any motor vehicle upon a highway in this state without

a valid driver's license, defendant's claim that under O.C.G.A. § 40-5-1(15) the defendant could not be considered a resident of Georgia was irrelevant. *Chiasson v. State*, 250 Ga. App. 63, 549 S.E.2d 503 (2001).

Right to drive is qualified right. — Right to operate motor vehicle upon public highways of this state is merely qualified right which can be exercised by obtaining

a license from the state. *Keenan v. Hardison*, 245 Ga. 599, 266 S.E.2d 205 (1980); *Ward v. State*, 188 Ga. App. 372, 373 S.E.2d 65 (1988).

Undocumented aliens. — Reading the definition of “resident” in O.C.G.A. § 40-5-1(15) and O.C.G.A. § 40-5-20(a) in *pari materia*, shows that the intention of the General Assembly was not to exempt undocumented aliens from the requirement of obtaining a Georgia driver’s license but to permit visitors, with no intention of becoming residents, to drive here without obtaining a Georgia license. *Diaz v. State*, 245 Ga. App. 380, 537 S.E.2d 784 (2000).

Statutes barring illegal aliens residing in Georgia from obtaining a Georgia driver’s license does not deprive the aliens of equal protection of the laws in violation of the Fourteenth Amendment. *John Doe No. 1 v. Ga. Dep’t of Pub. Safety*, 147 F. Supp. 2d 1369 (N.D. Ga. 2001).

Denial of defendant’s, an undocumented alien, motion to quash was affirmed because limiting the safe harbor provision of O.C.G.A. § 40-5-20 to the production at trial of a Georgia driver’s license was a rational part of the enforcement scheme, allowing the presumption created by a violation of O.C.G.A. § 40-5-29(b) to be automatically rebutted only when the evidence that the driver in fact had a valid license when cited was most indisputable and readily evaluated by the factfinder. *Castillo-Solis v. State*, 292 Ga. 755, 740 S.E.2d 583 (2013).

Mexican driver had no standing to challenge statute as unconstitutional. — Driver with a Mexican driver’s license did not have standing to challenge O.C.G.A. § 40-5-20 as conflicting with the 1943 Convention on the Regulation of Inter-American Automotive Traffic because the Mexican did not have an international license as required by the Convention and O.C.G.A. § 40-5-21(a)(2) and the license the Mexican produced did not meet the requirements of the Convention. *Medina v. State*, 312 Ga. App. 399, 718 S.E.2d 323 (2011).

Effect of license requirement on right to travel. — Mere fact of imposing a license requirement does not constitute state infringement on any right of locomotion

which an individual may have to travel on public ways as a common-law freeman. *Lebrun v. State*, 255 Ga. 406, 339 S.E.2d 227 (1986).

Custodial arrest for operating a motor vehicle without a license. — If an officer stops a vehicle in the good faith belief that a traffic violation has been committed, the officer’s ultimate failure to issue a traffic citation will not preclude the traffic offense from evincing the reasonable suspicion which served to justify the officer’s initial stop of the vehicle. Once a stop is effected, a defendant is subject to custodial arrest for operating a motor vehicle without a valid driver’s license. *State v. Chambers*, 194 Ga. App. 609, 391 S.E.2d 657 (1990).

City streets constitute highway for purposes of statute. — Proof that defendant was driving on city streets was sufficient to show defendant was driving on a “highway” so as to sustain a conviction for driving without a license as city streets fit within the broad definition of “highway” under O.C.G.A. § 40-5-20 making it a violation to drive without a license. *Scott v. State*, 254 Ga. App. 728, 563 S.E.2d 554 (2002).

Driving with expired driver’s license is a violation of O.C.G.A. § 40-5-20(a); O.C.G.A. § 40-5-120(7) (see O.C.G.A. § 40-5-120(4)) makes such a violation a misdemeanor. *Littlejohn v. State*, 165 Ga. App. 562, 301 S.E.2d 917 (1983).

Presumption raised by failure to have license in possession. — There existed no reversible error when the defendant was accused of (and subsequently convicted of) driving a vehicle without a valid license, but the offense on which the jury was charged concerned the failure to have a valid license in one’s possession at all times while operating a motor vehicle (see O.C.G.A. § 40-5-29) and the presumption thereby raised that the driver had no valid license. *Roberts v. State*, 173 Ga. App. 614, 327 S.E.2d 743 (1985).

Detention based on lack of driver’s license was proper. — Motion to suppress evidence seized from the defendant’s car was properly denied because a uniformed officer’s initial approach to the car, which had been driven to the scene of a controlled drug buy by a codefendant, was

a first-tier police-citizen encounter, the car was already stopped when the uniformed officer approached and asked the codefendant for identification, the codefendant admitted that the codefendant had no driver's license or other identification, and thus the officer had reasonable suspicion that the codefendant was violating the law by driving without a license and was justified in detaining the codefendant from driving off in the vehicle; the officer also had reasonable suspicion of criminal drug activity based on the fact that an informant who was working with police to conduct the drug deal had described a two-door silver Mercedes coupe with dealer tags as the target vehicle belonging to the defendant, and police had confirmed this vehicle was just at the establishment frequented by the defendant, the codefendant drove up in the vehicle just before defendant arrived in a different car, at the very time and place designated for the drug transaction, the codefendant parked near the drug transaction and made hand signals which could have been inferred to have been counter-surveillance signals that the codefendant saw no police and that the transaction could go forward, and, because these circumstances authorized the officer to conduct an investigative detention of the codefendant and the vehicle, the bringing of a drug dog to the scene during that brief detention was proper, and when the drug dog alerted to the vehicle as containing drugs, the subsequent warrantless search of the vehicle was justified. *Bowden v. State*, 279 Ga. App. 173, 630 S.E.2d 792 (2006).

Trial court properly denied the defendant's motion to suppress because the defendant admitted to the police officer that the defendant had no visa or passport, and that the only documentation the defendant could present was a Mexican driver's license written in Spanish and the Mexican consulate card; thus, the police officer had probable cause to arrest the defendant for driving without a license, and the arrest was lawful. *Garcia-Carrillo v. State*, 322 Ga. App. 439, 746 S.E.2d 137 (2013).

Traffic stop for compliance not unreasonably prolonged. — As an officer's questioning of the defendant, after a traf-

fic stop, about the defendant's length of time in Georgia was done to determine whether the defendant was in compliance with O.C.G.A. §§ 40-2-8(a) and 40-5-20(a), and did not unreasonably prolong the stop, the defendant's rights under U.S. Const., amend. IV were not violated. Therefore, methamphetamine seized from the defendant's purse during the stop did not have to be suppressed. *Sommese v. State*, 299 Ga. App. 664, 683 S.E.2d 642 (2009).

Golf carts. — After the defendant drove a golf cart on a public highway with a suspended license in violation of O.C.G.A. § 40-5-20(a), the trial court properly instructed the jury that the defendant had to have a driver's license; the evidence sufficiently supported the suspended license conviction. *Coker v. State*, 261 Ga. App. 646, 583 S.E.2d 498 (2003).

Safe harbor provision not applicable to driver with learner's permit. — Because the defendant's learner's permit was not valid for the purpose of driving unsupervised, as the defendant was on the day of a traffic stop, the defendant could not qualify for the safe harbor under O.C.G.A. § 40-5-20(a). *Colotl v. State*, 313 Ga. App. 42, 720 S.E.2d 210 (2011).

Actionable negligence arising from operation without license. — While it is a violation of state law to operate an automobile without a driver's license, this is actionable negligence only when there is a proximate causal connection between the violation and the injury. *Carpenter v. Lyons*, 78 Ga. App. 214, 50 S.E.2d 850 (1948) (decided under Ga. L. 1937, p. 322).

Evidence sufficient to sustain conviction. — Evidence was sufficient to find that a defendant violated O.C.G.A. § 40-5-20(a) because it was a matter of common knowledge that "the loop" or "bypass" in a certain area was a public highway, although there was no direct testimony of that fact. *Craig v. State*, 276 Ga. App. 329, 623 S.E.2d 518 (2005).

Because the defendant admittedly lacked a driver's license, the tag on the car being driven was expired, and the defendant produced no evidence that the car had been recently purchased, and thus fell within the initial 30-day registration period during which a numbered license

plate was not required, defendant's convictions were upheld on appeal. *Arellano v. State*, 289 Ga. App. 148, 656 S.E.2d 264 (2008).

Evidence insufficient to sustain conviction. — Testimony by a police officer that someone else ran a computer check and determined that defendant did not have a driver's license was not sufficient to sustain defendant's conviction for driving without a license. *James v. State*, 265 Ga. App. 689, 595 S.E.2d 364 (2004).

Because the state failed to present the parties' stipulation to the trier of fact and there was no other evidence that the defendant was driving without a license, insufficient evidence existed to sustain a conviction for driving without a license. *Raby v. State*, 274 Ga. App. 665, 618 S.E.2d 704 (2005).

Charge to jury. — Because the defendant was being tried under O.C.G.A. § 40-5-20, giving a clarifying charge to the jury on "driving without a license on the person" (see O.C.G.A. § 40-5-29) was

not error. *Duckworth v. State*, 223 Ga. App. 250, 477 S.E.2d 336 (1996), *aff'd*, 268 Ga. 566, 492 S.E.2d 201 (1997).

Cited in *Smith v. State*, 158 Ga. App. 663, 218 S.E.2d 631 (1981); *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982); *Pfeffier v. State*, 173 Ga. App. 374, 326 S.E.2d 562 (1985); *Cabral v. White*, 181 Ga. App. 816, 354 S.E.2d 162 (1987); *Spivey v. Sellers*, 185 Ga. App. 241, 363 S.E.2d 856 (1987); *Rogers v. State*, 206 Ga. App. 654, 426 S.E.2d 209 (1992); *Florence v. State*, 246 Ga. App. 479, 539 S.E.2d 901 (2000); *Rocha v. State*, 250 Ga. App. 209, 551 S.E.2d 82 (2001); *In the Interest of T. H.*, 258 Ga. App. 416, 574 S.E.2d 461 (2002); *Simmons v. State*, 281 Ga. App. 252, 635 S.E.2d 849 (2006); *Dunbar v. State*, 283 Ga. App. 872, 643 S.E.2d 292 (2007); *Lopez v. State*, 286 Ga. App. 873, 650 S.E.2d 430 (2007); *State v. Torres*, 290 Ga. App. 804, 660 S.E.2d 763 (2008); *Manhertz v. State*, 317 Ga. App. 856, 734 S.E.2d 406 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Motor scooter is a motor vehicle which must be licensed before operation in Georgia, and the operator of a motor scooter is subject to the same rules as drivers of automobiles. 1954-56 Op. Att'y Gen. p. 485.

Go-cart is a motor vehicle; the operator of a go-cart must be licensed; the go-cart must be registered, inspected annually, and equipped with headlights, stop lights, and turn signals. 1969 Op. Att'y Gen. No. 69-194.

Nonresident 16-year-old student. — Nonresident student is not required to

obtain a Georgia driver's license in order to operate a vehicle on the public roads and highways so long as the student is at least 16 years of age and is the holder and possessor of a valid operator's or public chauffeur's license issued by the state of domicile. 1970 Op. Att'y Gen. No. 70-40.

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 40-5-20(a) are designated as offenses for which those charged are to be fingerprinted. 2008 Op. Att'y Gen. No. 2008-6; 2009 Op. Att'y Gen. No. 2009-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 100, 102, 112 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 319 et seq., 323, 331 et seq.

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 ALR 532; 61 ALR 1190; 78 ALR 1028; 87

ALR 1469; 111 ALR 1258; 163 ALR 1375; 53 ALR2d 850.

Constitutionality and construction of statutes with respect to nonresident motor vehicle operators' or drivers' licenses, 82 ALR 1392.

Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 108 ALR 1162; 125 ALR 1459.

Lack of proper automobile registration or operator's license as evidence of operator's negligence, 29 ALR2d 963.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 ALR2d 850.

Validity of state statutes, regulations, or other identification requirements restricting or denying driver's licenses to illegal aliens, 16 ALR6th 131.

40-5-21. Exemptions generally.

(a) Except as provided in Article 7 of this chapter, the "Uniform Commercial Driver's License Act," the following persons are exempt from licenses under this chapter:

(1) Any employee of the United States government while operating a motor vehicle owned by or leased to the United States government and which is being operated on official business, unless such employee is required by the United States government or any agency thereof to have a state driver's license;

(2) A nonresident who has in his or her immediate possession a valid driver's license issued to him or her in his or her home state or country; provided, however, that such person would otherwise satisfy all requirements to receive a Georgia driver's license and, if such nonresident driver's license is in a language other than English, the nonresident also has in his or her immediate possession a valid international driving permit which conforms to and has been issued in accordance with the provisions of the Convention on Road Traffic, 3 U.S.T. 3008, TIAS 2487, or any similar such treaty, international agreement, or reciprocal agreement between the United States and a foreign nation concerning driving privileges of nonresidents;

(3) A nonresident on active duty in the armed forces of the United States who has a valid license issued by his or her home state, and such nonresident's spouse or dependent son or daughter who has a valid license issued by such person's home state;

(4) Any person on active duty in the armed forces of the United States who has in his or her immediate possession a valid license issued in a foreign country by the armed forces of the United States, for a period of not more than 45 days from the date of his or her return to the United States;

(5) Any inmate or resident patient of a state, county, or municipally owned institution who drives a vehicle while on the grounds of such institution and while accompanied by and under the direct personal supervision of a qualified driving instructor or of some other person duly authorized in writing to so accompany and supervise such inmate or resident patient;

(6) Any person driving or operating a farm tractor or farm implement temporarily operated on a highway for the purpose of conducting farm business;

(7) Any inmate of a state, county, or municipal prison, correctional institution, or jail while operating a motor vehicle owned by or leased to the state, county, or municipality and being operated with the written approval of the warden or superintendent and in such manner and for such purpose as may be specified by the warden or superintendent, provided that such inmate, within the 60 day period prior to the grant of written authority, has passed the vision, written, and driving tests required for licensing a citizen to operate such motor vehicle. The department shall give such tests and issue a certificate, without charge therefor, to any inmate passing such tests;

(8) A member of the reserve components of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated in accordance with the duties of such member as a member of the reserve components of the armed forces;

(9) Any person seeking to obtain a driver's license while taking the driving examination for such license accompanied by a driver license examiner of the department or a certified examining agent of the department;

(10) Any migrant farm worker who works in this state less than 90 days in any calendar year and who possesses a valid driver's license issued by another state;

(11) Any resident who is 15 years of age or over while taking actual in-car training in a training vehicle other than a commercial motor vehicle under the direct personal supervision of a driving instructor when such driving instructor and training vehicle are licensed by the department in accordance with the provisions of Chapter 13 of Title 43, "The Driver Training School License Act." As used in the previous sentence, the term "commercial motor vehicle" shall have the meaning specified in Code Section 40-5-142. All vehicles utilized for the in-car training authorized under this paragraph shall be equipped with dual controlled brakes and shall be marked with signs in accordance with the rules of the department clearly identifying such vehicles as training cars belonging to a licensed driving school. A driving instructor shall test the eyesight of any unlicensed person who will be receiving actual in-car training prior to commencement of such training, and no unlicensed driver shall receive in-car training unless such person has at least the visual acuity and horizontal field of vision as is required for issuance of a driver's license in subsection (c) of Code Section 40-5-27; and

(12) Any person while operating a personal transportation vehicle:

(A) On any way publicly maintained for the use of personal transportation vehicles by the public and no other types of motor vehicles in accordance with a local ordinance adopted pursuant to Part 3 or 6 of Article 13 of Chapter 6 of this title; or

(B) When crossing a street or highway used by other types of motor vehicles at a location designated for such crossing pursuant to subsection (d) of Code Section 40-6-331 or pursuant to a PTV plan authorized by a local authority as described in Part 6 of Article 13 of Chapter 6 of this title.

(b) Notwithstanding any contrary provisions of Code Section 40-5-20 or subsection (a) of this Code section, a nonresident of this state who is attending a school in this state shall be exempt from the driver's licensing requirements of this chapter if and only if:

(1) He or she is at least 16 years of age and has in his or her immediate possession a valid license issued to him or her in his or her home state or country; provided, however, that any restrictions which would apply to a Georgia driver's license as a matter of law would apply to the privilege afforded to the out-of-state license; and

(2) He or she is currently enrolled or was enrolled during the immediately preceding period of enrollment in a school in this state, has paid for the current period of enrollment or paid for the immediately preceding period of enrollment the tuition charged by the school to nonresidents of Georgia, and has in his or her possession proof of payment of such tuition for such current or immediately preceding period of enrollment. (Ga. L. 1937, p. 322, art. 4, § 1; Ga. L. 1939, p. 135, § 9; Code 1933, § 68B-202, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 307, § 1; Ga. L. 1978, p. 931, § 1; Ga. L. 1978, p. 2189, § 1; Code 1981, § 40-5-21.1, enacted by Ga. L. 1983, p. 638, § 2; Ga. L. 1989, p. 519, § 5; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 4; Ga. L. 1994, p. 478, § 1; Ga. L. 1996, p. 1624, § 6; Ga. L. 1997, p. 760, § 9; Ga. L. 2000, p. 951, § 5-4; Ga. L. 2001, p. 184, §§ 2-1, 3-1; Ga. L. 2004, p. 67, § 2; Ga. L. 2005, p. 334, § 17-3/HB 501; Ga. L. 2008, p. 589, § 1/HB 969; Ga. L. 2008, p. 1154, § 2/SB 488; Ga. L. 2014, p. 745, § 8/HB 877.)

The 2014 amendment, effective July 1, 2014, substituted "personal transportation vehicle" for "motorized cart" in paragraph (a)(12); in subparagraph (a)(12)(A), substituted "personal transportation vehicles" for "motorized carts" and substituted "Part 3 or 6 of Article 13 of Chapter 6 of this title" for "subsection (a) of Code Section 40-6-331"; and added "or pursuant to

a PTV plan authorized by a local authority as described in Part 6 of Article 13 of Chapter 6 of this title" at the end of subparagraph (a)(12)(B).

Cross references. — Convention on International Road Traffic, 3 U.S.T. 3008, T.I.A.S. No. 2487.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "Georgia"

was deleted preceding "Uniform Commercial Driver's License Act" in subsection (a).

Editor's notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, provides that the amendment made by the Act to this Code section shall apply to offenses com-

mitted on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 205 (2001).

JUDICIAL DECISIONS

Sentence void as outside punitive parameters. — Court's imposition of a 12-month probation and a \$750 fine fell outside the parameters for either a first or subsequent offense, and was therefore void. *State v. Dingler*, 207 Ga. App. 391, 427 S.E.2d 861 (1993).

Penalty for permitting unlicensed person to drive car. — Sentence of six months in jail, six months on probation, and a fine of \$1,000 for permitting an unlicensed person to drive a car did not constitute cruel and unusual punishment. *Means v. State*, 255 Ga. 537, 340 S.E.2d 612 (1986).

Mexican driver had no standing to challenge driver's license requirement. — Driver with a Mexican driver's license did not have standing to challenge O.C.G.A. § 40-5-20 as conflicting with the 1943 Convention on the Regulation of Inter-American Automotive Traffic because the Mexican did not have an inter-

national license as required by the Convention and O.C.G.A. § 40-5-21(a)(2) and the license the Mexican produced did not meet the requirements of the Convention. *Medina v. State*, 312 Ga. App. 399, 718 S.E.2d 323 (2011).

Detention based on lack of driver's license was proper. — Trial court properly denied the defendant's motion to suppress because the defendant admitted to the police officer that the defendant had no visa or passport, and that the only documentation the defendant could present was a Mexican driver's license written in Spanish and the Mexican consulate card; thus, the police officer had probable cause to arrest the defendant for driving without a license, and the arrest was lawful. *Garcia-Carrillo v. State*, 322 Ga. App. 439, 746 S.E.2d 137 (2013).

Cited in *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982); *Lopez v. State*, 286 Ga. App. 873, 650 S.E.2d 430 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Go-cart is a motor vehicle; the operator of a go-cart must be licensed; the go-cart must be registered, inspected annually, and equipped with headlights, stop lights, and turn signals. 1969 Op. Att'y Gen. No. 69-194.

Nonresident 16-year-old student. — Nonresident student is not required to

obtain a Georgia driver's license in order to operate a vehicle on the public roads and highways so long as the student is at least 16 years of age and is the holder and possessor of a valid operator's or public chauffeur's license issued by the state of domicile. 1970 Op. Att'y Gen. No. 70-40.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 108 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 325 et seq.

ALR. — Applicability of state or municipal traffic or vehicle regulations to those engaged in handling United States mail, 18 ALR 1169.

40-5-21.1. Temporary licenses, permits, or special identification cards; foreign licenses or identification cards as evidence of legal presence in the United States; extensions.

(a) Notwithstanding any other provision of this title, an applicant who presents in person valid documentary evidence of:

(1) Admission to the United States in a valid, unexpired nonimmigrant status;

(2) A pending or approved application for asylum in the United States;

(3) Admission into the United States in refugee status;

(4) An approved application for temporary protected status in the United States;

(5) Approved deferred action status;

(6) Other federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law; or

(7) Verification of lawful presence as provided by Code Section 40-5-21.2

may be issued a temporary license, permit, or special identification card. Such temporary license, permit, or special identification card shall be valid only during the period of time of the applicant's authorized stay in the United States or five years, whichever occurs first.

(b) A driver's license or identification card issued by any state or territory which, on or after July 1, 2006, authorized such driver's license or identification card to be issued to persons not lawfully present in the United States may not be accepted as evidence of legal presence in the United States.

(c) Any noncitizen applicant whose Georgia driver's license or identification card has expired, or will expire within 30 days, who has filed, or on whose behalf has been filed, a request for an extension with the United States Department of Homeland Security, or similar such federal issuing agency, for time to remain lawfully within the United States shall be issued a temporary driving permit or identification card valid for 120 days from the date of the expiration of his or her valid driver's license or identification card. The noncitizen applicant shall be required to present evidence of the application for extension by submitting a copy or copies of documentation designated by the department. A temporary driving permit or identification card shall be issued upon

submission of the required documentation and an application fee in an amount to be determined by the department. Upon the expiration of the temporary driving permit or identification card, no further consecutive temporary permits or identification cards shall be authorized; provided, however, application may be made following the expiration of an additional valid Georgia driver's license or identification card. (Code 1981, § 40-5-21.1, enacted by Ga. L. 2005, p. 1122, § 2/HB 577; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2008, p. 1154, § 3/SB 488; Ga. L. 2010, p. 932, § 2/HB 396; Ga. L. 2013, p. 283, § 1/SB 122.)

The 2013 amendment, effective January 1, 2014, added subsection (c).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 100 et seq.

40-5-21.2. Compliance with Systematic Alien Verification for Entitlements Program; application; implementation.

(a) As used in this Code section, the term:

(1) "Department" means the Georgia Department of Driver Services.

(2) "SAVE Program" means the Systematic Alien Verification for Entitlements (SAVE) Program established by the United States Bureau of Citizenship and Immigration Services.

(b) The department shall utilize the following procedures in this subsection before issuing an identification card, license, permit, or other official document to an applicant who is a noncitizen:

(1) The department shall attempt to confirm through the SAVE program that the applicant is lawfully present in the United States; and

(2) If the SAVE program does not provide sufficient information to the department to make a determination, the department shall be authorized to accept verbal or e-mail confirmation of the legal status of the applicant from the Department of Homeland Security.

(c) This Code section shall not apply to instances when a federal law mandates acceptance of a document.

(d) Subsection (b) of this Code section shall become effective upon the department's full implementation of the SAVE Program but not later than January 1, 2008. (Code 1981, § 40-5-21.2, enacted by Ga. L. 2007, p. 27, § 3/SB 5; Ga. L. 2008, p. 1154, § 4/SB 488; Ga. L. 2010, p. 932, § 3/HB 396.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, a comma was deleted following “noncitizen” in subsection (b).

Editor’s notes. — Ga. L. 2007, p. 27, § 1/SB 5, not codified by the General Assembly, provides: “The General Assembly of Georgia finds that the Real ID Act, H.R. 1268, P.L. 109-13, enacted by Congress in 2005, established standards that state-issued drivers’ licenses and identification cards must meet by May 11, 2008, if the licenses or identification cards are to be accepted as valid identification by the federal government. After May 11, 2008, federal agencies are scheduled to accept only drivers’ licenses or identification cards that meet Real ID standards. Non-compliant cards will not be accepted for federal purposes such as boarding a domestic flight, opening a bank account, or any other service or activity over which the federal government claims jurisdiction. Each state will also be required to share data from their drivers’ licenses or identification cards data base with other states. The exact requirements of the Real ID Act have yet to be defined. The Department of Homeland Security was originally going to promulgate regulations by November, 2005. That date was changed to November, 2006. Currently, regulations are scheduled for January, 2007, but many parties feel this deadline may also pass without the regulations being issued.

“Because the Real ID Act was attached to a vital supplemental spending bill for defense and tsunami relief, there was no opportunity for a full examination of the consequences of the proposal. While everyone recognizes the need to make identifying documents as secure as is humanly possible, the one-size-fits-all approach required by the Real ID Act may actually increase the documents’ vulnerability to counterfeiting. If criminals are able to invade one state’s system, they may have access to all states’ systems. On another front, a report from the National Conference of State Legislatures, the National Governors Association, and the American Association of Motor Vehicle Administrators suggests that the new requirements of the Real ID Act will cost states at least \$11 billion over the first five years of the

program. Despite this massive price tag, there has been no money appropriated to help states meet the law’s demands.

“The Real ID Act gives the Department of Homeland Security the power to set federal standards and determine whether state drivers’ licenses and other identification cards meet these standards. There is no provision in the Real ID Act that requires or even mentions information privacy or data security. The federal and state governments must ensure that the data needed to verify the identity of driver’s license applicants is maintained securely and not used for other unrelated purposes. The Department of Homeland Security must include privacy protections for personal driver data as they promulgate regulations spelling out what states need to do to implement the federal law. Success of the Real ID Act depends on the Department of Homeland Security and the states collaborating to find a way of implementing its requirements in a fiscally responsible and risk adjusted manner. Therefore, the Georgia Department of Driver Services is directed to withhold any legislation designed to implement the Real ID Act in Georgia until such time as the Department of Homeland Security has enacted regulations that define the exact type of information that is to be required on a state driver’s license. Furthermore, before the Real ID Act is implemented in Georgia, the Governor of Georgia is entitled to review the regulations promulgated by the Department of Homeland Security and determine if they adequately safeguard and restrict use of the information in order to protect the privacy rights of the citizens of Georgia.

“The citizens of Georgia also recognize the importance of ensuring that drivers’ licenses are issued only to persons legally present in this state. Therefore, the use of secure and verifiable identification will be required in this state in order to obtain a driver’s license. This requirement is in harmony with the intent of the Real ID Act to secure identification processes in this country. The Department of Driver Services is instructed to take the necessary steps to become a participant in the SAVE Program (Systematic Alien Verification for Entitlements). This program, ad-

ministered by the United States Bureau of Citizenship and Immigration Services, is designed to verify the immigration status of noncitizens.”

U.S. Code. — The Systematic Alien Verification for Entitlements Program, referred to in this Code section, is codified, primarily, at 8 U.S.C. § 1324.

40-5-22. Persons not to be licensed; minimum ages for licensees; school attendance requirements; driving training requirements.

(a) Except as otherwise provided in this Code section, the department shall not issue any Class C driver's license to any person who is under 18 years of age or Class M driver's license to any person who is under the age of 17 years, except that the department may, under subsection (a) of Code Section 40-5-24, issue a Class P instruction permit permitting the operation of a noncommercial Class C vehicle to any person who is at least 15 years of age, and may, under subsection (b) of Code Section 40-5-24, issue a Class D driver's license permitting the operation of a noncommercial Class C vehicle to any person who is at least 17 years of age. On and after January 1, 1985, the department shall not issue any driver's license to any person under 18 years of age unless such person presents a certificate or other evidence acceptable to the department which indicates satisfactory completion of an alcohol and drug course as prescribed in subsection (b) of Code Section 20-2-142; provided, however, that a person under 18 years of age who becomes a resident of this state and who has in his or her immediate possession a valid license issued to him or her in another state or country shall not be required to take or complete the alcohol and drug course. The department shall not issue a driver's license or a Class P instruction permit for the operation of a Class A or B vehicle or any commercial driver's license to any person who is under the age of 18 years.

(a.1)(1) The department shall not issue an instruction permit or driver's license to a person who is younger than 18 years of age unless at the time such minor submits an application for an instruction permit or driver's license the applicant presents acceptable proof that he or she has received a high school diploma, a general educational development (GED) diploma, a special diploma, or a certificate of high school completion or has terminated his or her secondary education and is enrolled in a postsecondary school, is pursuing a general educational development (GED) diploma, or the records of the department indicate that said applicant:

(A) Is enrolled in and not under expulsion from a public or private school and has satisfied relevant attendance requirements as set forth in paragraph (2) of this subsection for a period of one academic year prior to application for an instruction permit or driver's license; or

(B) Is enrolled in a home education program that satisfies the reporting requirements of all state laws governing such program.

The department shall notify such minor of his or her ineligibility for an instruction permit or driver's license at the time of such application.

(2) The department shall forthwith notify by certified mail or statutory overnight delivery, return receipt requested, any minor issued an instruction permit or driver's license in accordance with this subsection other than a minor who has terminated his or her secondary education and is enrolled in a postsecondary school or who is pursuing a general educational development (GED) diploma that such minor's instruction permit or driver's license is suspended subject to review as provided for in this subsection if the department receives notice that indicates that such minor:

(A) Has dropped out of school without graduating and has remained out of school for ten consecutive school days;

(B) Has ten or more school days of unexcused absences in the current academic year or ten or more school days of unexcused absences in the previous academic year; or

(C) Has been found in violation by a hearing officer, panel, or tribunal of one of the following offenses, has received a change in placement for committing one of the following offenses, or has waived his or her right to a hearing and pleaded guilty to one of the following offenses:

(i) Threatening, striking, or causing bodily harm to a teacher or other school personnel;

(ii) Possession or sale of drugs or alcohol on school property or at a school sponsored event;

(iii) Possession or use of a firearm in violation of Code Section 16-11-127.1 or possession or use of a dangerous weapon as defined in Code Section 16-11-121 but shall not include any part of an exhibit brought to school in connection with a school project;

(iv) Any sexual offense prohibited under Chapter 6 of Title 16; or

(v) Causing substantial physical or visible bodily harm to or seriously disfiguring another person, including another student.

Notice given by certified mail or statutory overnight delivery with return receipt requested mailed to the person's last known address shall be prima-facie evidence that such person received the required

notice. Such notice shall include instructions to the minor to return immediately the instruction permit or driver's license to the department and information summarizing the minor's right to request an exemption from the provisions of this subsection. The minor so notified may request in writing a hearing within ten business days from the date of receipt of notice. Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." After such hearing, the department shall sustain its order of suspension or rescind such order. The department shall be authorized to grant an exemption from the provisions of this subsection to a minor, upon such minor's petition, if there is clear and convincing evidence that the enforcement of the provisions of this subsection upon such minor would create an undue hardship upon the minor or the minor's family or if there is clear and convincing evidence that the enforcement of the provisions of this subsection would act as a detriment to the health or welfare of the minor. Appeal from such hearing shall be in accordance with said chapter. If no hearing is requested within the ten business days specified above, the right to a hearing shall have been waived and the instruction permit or driver's license of the minor shall remain suspended. The suspension provided for in this paragraph shall be for a period of one year or shall end upon the date of such minor's eighteenth birthday or, if the suspension was imposed pursuant to subparagraph (A) of this paragraph, upon receipt of satisfactory proof that the minor is pursuing or has received a general educational development (GED) diploma, a high school diploma, a special diploma, a certificate of high school completion, or has terminated his or her secondary education and is enrolled in a postsecondary school, whichever comes first.

(3) The State Board of Education and the commissioner of driver services are authorized to promulgate rules and regulations to implement the provisions of this subsection.

(4) The Technical College System of Georgia shall be responsible for compliance and noncompliance data for students pursuing a general educational development (GED) diploma.

(a.2)(1) On and after January 1, 2002, the department shall not issue any initial Class D driver's license or, in the case of a person who has never been issued a Class D driver's license by the department or the equivalent thereof by any other jurisdiction, any initial Class C driver's license unless such person:

(A) Is at least 16 years of age and has completed an approved driver education course in a licensed private or public driver training school and in addition has a cumulative total of at least 40 hours of other supervised driving experience including at least six

hours at night, all of which is verified in writing signed before a person authorized to administer oaths by a parent or guardian of the applicant or by the applicant if such person is at least 18 years of age; or

(B) Is at least 17 years of age and has completed a cumulative total of at least 40 hours of supervised driving experience including at least six hours at night, and the same is verified in writing signed before a person authorized to administer oaths by a parent or guardian of the applicant or by the applicant if such person is at least 18 years of age; provided, however, that a person 17 years of age or older who becomes a resident of this state, who meets all of the qualifications for issuance of a Class C license with the exception of the completion of an approved driver education training course and at least 40 hours of supervised driving experience as required by this subsection, and who has in his or her immediate possession a valid license equivalent to a Class C license issued to him or her in another state or country shall be entitled to receive a Class C license.

(2) The commissioner shall by rule or regulation establish standards for approval of any driver education course for purposes of subparagraph (A) of paragraph (1) of this subsection, provided that such course shall be designed to educate young drivers about safe driving practices and the traffic laws of this state and to train young drivers in the safe operation of motor vehicles, and provided, further, that the commissioner shall provide for the approval of courses from other states to satisfy the requirements of this paragraph for any child moving into this state within nine months of his or her sixteenth birthday when the child's parent is in the active military service of the United States.

(3) For purposes of supervised driving experience under paragraph (1) of this subsection, supervision shall be provided by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver.

(4) For the purposes of this Code section, the term "approved driver education training course" shall include those driver education training courses approved by the Department of Driver Services.

(5) For purposes of this Code section, the term "approved driver education training course" shall include instruction given in the course of a home education program that satisfies the reporting requirements of all state laws governing such programs, provided that such instruction utilizes a curriculum approved by the department.

(b)(1) Notwithstanding the provisions of subsection (a) of this Code section, any person 14 years of age or older who has a parent or guardian who is medically incapable of being licensed to operate a motor vehicle due to visual impairment may apply for and, subject to the approval of the commissioner, may be issued a restricted noncommercial Class P instruction permit for the operation of a noncommercial Class C vehicle. Any person permitted pursuant to this subsection shall be accompanied whenever operating a motor vehicle by such physically impaired parent or guardian or by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver. The department shall require satisfactory proof that the physically impaired parent or guardian previously held a valid driver's license in the State of Georgia, another state, or the District of Columbia before issuing an instructional permit pursuant to this paragraph.

(2) Notwithstanding the provisions of subsection (a) of this Code section, any person 15 years of age or older who has a parent or guardian who is medically incapable of being licensed to operate a motor vehicle due to physical impairment and has been issued an identification card containing the international handicapped symbol pursuant to Article 8 of this chapter may apply for and, subject to the approval of the commissioner, may be issued a restricted noncommercial Class P instruction permit for the operation of a noncommercial Class C vehicle. Any person permitted pursuant to this paragraph shall be accompanied whenever operating a motor vehicle by such physically impaired parent or guardian or by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver. The department shall require satisfactory proof that the physically impaired parent or guardian previously held a valid driver's license in the State of Georgia, another state, or the District of Columbia before issuing an instructional permit pursuant to this paragraph.

(c) The department shall not issue any driver's license to nor renew the driver's license of any person:

(1) Whose license has been suspended during such suspension, or whose license has been revoked, except as otherwise provided in this chapter;

(2) Whose license is currently under suspension or revocation in any other jurisdiction upon grounds which would authorize the suspension or revocation of a license under this chapter;

(3) Who is a habitual user of alcohol or any drug to a degree rendering him or her incapable of safely driving a motor vehicle;

(4) Who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

(5) Who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(6) Who the commissioner has good cause to believe would not, by reason of physical or mental disability, be able to operate a motor vehicle with safety upon the highway; or

(7) Whose license issued by any other jurisdiction is suspended or revoked by such other jurisdiction during the period such license is suspended or revoked by such other jurisdiction. (Ga. L. 1937, p. 322, art. 4, § 2; Ga. L. 1966, p. 12, § 1; Code 1933, § 68B-203, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 745, § 2; Ga. L. 1984, p. 22, § 40; Ga. L. 1986, p. 839, § 1; Ga. L. 1989, p. 519, § 6; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 321, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1997, p. 760, § 10; Ga. L. 2000, p. 951, § 5-5; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 184, § 1-1; Ga. L. 2004, p. 107, § 21B; Ga. L. 2005, p. 60, § 40/HB 95; Ga. L. 2005, p. 334, § 17-4/HB 501; Ga. L. 2005, p. 798, § 22/SB 35; Ga. L. 2005, p. 1461, § 3/SB 226; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2006, p. 343, § 3/SB 637; Ga. L. 2006, p. 449, § 2/HB 1253; Ga. L. 2008, p. 171, § 2/HB 1111; Ga. L. 2008, p. 335, § 6/SB 435; Ga. L. 2008, p. 589, § 1/HB 969; Ga. L. 2010, p. 199, § 1/HB 258; Ga. L. 2011, p. 355, § 2/HB 269; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2012, p. 72, § 2/SB 236; Ga. L. 2014, p. 432, § 2-13/HB 826.)

The 2012 amendment, effective January 1, 2013, inserted “, and provided, further, that the commissioner shall provide for the approval of courses from other states to satisfy the requirements of this paragraph for any child moving into this state within nine months of his or her sixteenth birthday when the child’s parent is in the active military service of the United States” at the end of paragraph (a.2)(2).

The 2014 amendment, effective July 1, 2014, substituted the present provisions of division (a.1)(2)(C)(iii) for the former provisions, which read: “Possession or use of a weapon on school property or at a school sponsored event. For purposes of this division, the term ‘weapon’ shall have the same meaning as in Code Section 16-11-127.1 but shall not include any part of an archeological or cultural exhibit

brought to school in connection with a school project.”

Cross references. — Driver education course included for purposes of enrollment counts of public school students, § 20-2-160. School attendance reports, §§ 20-2-320, 20-2-690, 20-2-697, 20-2-701. Graduated licensing and related restrictions, § 40-5-24. Applications of minors, § 40-5-26. Suspension of licenses of persons under age 21 for certain offenses, § 40-5-57.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, punctuation was modified in division (a.1)(2)(C)(iii).

Editor’s notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Teen-age and Adult Driver Responsibility Act’.”

Ga. L. 1997, p. 760, § 27, provides that

the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date, except that subsection (a.1) of this Code section became effective January 1, 1998.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2005, p. 1461, § 7/SB 226, provides that the fourth 2005 amendment, as amended by Ga. L. 2006, p. 343, § 3/SB 637, becomes effective on January 1, 2007, subject to available funds. Funds were appropriated at the 2006 session of the General Assembly.

Ga. L. 2005, p. 1461, § 6/SB 226, not codified by the General Assembly, provides: "The provisions of this Act shall not

apply to or otherwise affect any valid license or instructional permit which has been issued to any person by this state and which is in effect on the effective date of this Act. On and after the effective date of this Act, no new license or instructional permit shall be issued except in compliance with the provisions of this Act."

Administrative rules and regulations. — Regular studies, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Student Support, Rule 160-4-8-.14.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 205 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1910, p. 93, § 9, Ga. L. 1921, p. 255, § 6, and former Code 1933, § 68-307 are included in the annotations for this Code section.

Constitutionality. — Driver's equal protection challenge to O.C.G.A. § 40-5-22(c)(2) failed as the statute did not create a suspect class or impact a fundamental right and there was a rational basis to create a class of driver's license applicants whose out-of-state licenses were suspended or revoked; the classification bore a direct relation to the strong governmental interests in protecting the public from drivers whose licenses had been revoked for driving under the influence and in preventing license shopping by nonresidents with revoked out-of-state licenses. *Roberts v. Burgess*, 279 Ga. 486, 614 S.E.2d 25 (2005).

Driver's equal protection challenge to O.C.G.A. § 40-5-22(c)(7) failed because when a driver applied for a Florida license, the driver voluntarily subjected oneself to that state's laws relating to the issuance of licenses; Florida validly suspended the driver's license and neither Georgia nor Florida was precluded from

taking into account offenses that occurred in another state in deciding whether to issue or revoke an already issued operator's license. *Roberts v. Burgess*, 279 Ga. 486, 614 S.E.2d 25 (2005).

Operation of motor vehicle by minor under 16. — It was unlawful for a minor under 16 years of age to operate a motor vehicle upon the highways of this state, whether the owner was accompanied by the owner of the machine or not, and regardless of experience. *Western & A.R.R. v. Reed*, 35 Ga. App. 538, 134 S.E. 134, cert. denied, 35 Ga. App. 808, (1926) (decided under Ga. L. 1921, p. 255, § 6).

Rule only applicable to public streets or highways. — While it is unlawful for a minor under 16 years of age to operate a motor vehicle upon the public highways, the rule is not applicable to roads which are not public streets or highways. *Western & A.R.R. v. Reed*, 35 Ga. App. 538, 134 S.E. 134, cert. denied, 35 Ga. App. 808, (1926) (decided under Ga. L. 1921, p. 255, § 6).

Employment of 18-year-old driver not negligence per se. — Fact that defendant employed and used 18-year-old boy as driver was not negligence per se, inasmuch as persons 16 years of age or

older and otherwise qualified are permitted to drive an automobile in this state. *Carpenter v. Lyons*, 78 Ga. App. 214, 50 S.E.2d 850 (1948) (decided under former Code 1933, § 68-307).

Cited in *Bryan v. McClellan Enters., Inc.*, 191 Ga. App. 646, 382 S.E.2d 423 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 112 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 331 et seq., 335 et seq.

ALR. — Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

Statutory change of age of majority as affecting preexisting status or rights, 75 ALR3d 228.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 ALR3d 475.

State's liability for improperly licensing negligent driver, 41 ALR4th 111.

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, for reinstatement of suspended or revoked driver's license, 2 ALR5th 725.

40-5-22.1. Reinstatement of license of child under 16 years convicted of driving under influence of alcohol or drugs.

Notwithstanding any other provision of law, if a child under 16 years of age is adjudicated delinquent of driving under the influence of alcohol or drugs or of possession of marijuana or a controlled substance in violation of Code Section 16-13-30 or of the unlawful possession of a dangerous drug in violation of Code Section 16-13-72 or convicted in any other court of such offenses, the court shall order that the privilege of such child to apply for and be issued a driver's license or learner's permit shall be suspended and delayed until such child is 17 years of age for a first conviction and until such child is 18 years of age for a second or subsequent such conviction. Upon reaching the required age, such license privilege shall be reinstated if the child submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program or an assessment and intervention program approved by the juvenile court and pays a reinstatement fee to the Department of Driver Services. The reinstatement fee for a first such conviction shall be \$210.00 or \$200.00 if paid by mail. The reinstatement fee for a second such conviction shall be \$310.00 or \$300.00 if paid by mail. The reinstatement fee for a third or subsequent such conviction shall be \$410.00 or \$400.00 if paid by mail. The court shall notify the department of its order delaying the issuance of such child's license within 15 days of the date of such order. The department shall not issue a driver's license or learner's permit to any person contrary to a court order issued pursuant to this Code section. (Code 1981, § 40-5-22.1, enacted by Ga. L. 1990, p. 1148, § 1; Ga. L. 1992, p. 2785, § 5; Ga. L. 2000, p. 951, § 5-6; Ga. L. 2005, p. 334, § 17-5/HB 501; Ga. L. 2009, p. 679, § 1/HB 160.)

Law reviews. — For note on 1990 enactment of this Code section, see 7 Ga. St. U.L. Rev. 337 (1990).

40-5-23. Classes of licenses.

(a) The department upon issuing a driver's license shall indicate thereon the type or general class of vehicles that the licensee may drive.

(b) Subject to this chapter, the commissioner shall establish by rules and regulations such qualifications, including but not limited to, training, experience, or educational prerequisites, as he or she believes are necessary for the safe operation of the various types, sizes, or combinations of vehicles and shall appropriately examine each applicant to determine his or her qualification according to the type or general class of license applied for.

(c) The noncommercial classes of motor vehicles for which operators may be licensed shall be as follows:

Class C — Any single vehicle with a gross vehicle weight rating not in excess of 26,000 pounds, any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of 10,000 pounds, any such vehicle towing a vehicle with a gross vehicle weight rating in excess of 10,000 pounds, provided that the combination of vehicles has a gross combined vehicle weight rating not in excess of 26,000 pounds, and any self-propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping, or travel purposes and is used solely as a family or personal conveyance; except that any combination of vehicles with a gross vehicle weight rating not in excess of 26,000 pounds may be operated under such class of license if such combination of vehicles are controlled and operated by a farmer, used to transport agricultural products, livestock, farm machinery, or farm supplies to or from a farm, and are not used in the operations of a common or contract carrier;

Class D — Provisional license applicable to noncommercial Class C vehicles for which an applicant desires a driver's license but is not presently licensed to drive;

Class E — Any combination of vehicles with a gross vehicle weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of 10,000 pounds, and all vehicles included within Class F and Class C;

Class F — Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more, any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of 10,000 pounds, and all vehicles included within Class C;

Class M — Motorcycles, motor driven cycles, and three-wheeled motorcycles;

Class P — Instruction permit applicable to all types of vehicles for which an applicant desires a driver's license but is not presently licensed to drive.

Any applicant for a Class E or Class F license must possess a valid Georgia driver's license for Class C vehicles. A license issued pursuant to this Code section shall not be a commercial driver's license. (Code 1933, § 68B-204, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1984, p. 1329, § 1A; Ga. L. 1989, p. 519, § 7; Ga. L. 1990, p. 2048, § 4; Ga. L. 1997, p. 760, § 11; Ga. L. 2000, p. 951, § 5-7; Ga. L. 2005, p. 854, § 1/SB 273; Ga. L. 2006, p. 504, § 1/HB 1392; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2010, p. 932, § 5/HB 396.)

Cross references. — License requirement for operators of ambulance services, § 31-11-30 et seq.

Editor's notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed

on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2005, p. 854, § 3/SB 273, not codified by the General Assembly, provides that the 2005 amendment applies to offenses occurring on or after July 1, 2005.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

JUDICIAL DECISIONS

Evidence sufficient to indicate need for former Class 3 license. — Evidence that a school bus carried approximately 60 students on the day the driver was arrested was sufficient circumstantial evidence to authorize a conclusion that the

school bus required an operator possessing a Class 3 license. *Griggs v. State*, 167 Ga. App. 581, 307 S.E.2d 75 (1983) (decided prior to the 1989 amendment, which rewrote subsection (c)).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92A-401 are included in the annotations for this Code section.

Person or business entity must comply with Driver Training School

License Act if the person of entity prepares applicant for license examination required for a former class three, four, or five license. 1974 Op. Att'y Gen. No. 74-101 (decided under former Code 1933, § 92A-401).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 108 et seq.

40-5-24. Instruction permits; graduated licensing and related restrictions; temporary licenses.

(a)(1)(A) Any resident of this state who is at least 15 years of age may apply to the department for an instruction permit to operate a noncommercial Class C vehicle. The department shall, after the applicant has successfully passed all parts of the examination referred to in Code Section 40-5-27 other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his or her immediate possession, to drive a Class C vehicle upon the public highways for a period of two years when accompanied by a person at least 21 years of age who is licensed as a driver for a commercial or noncommercial Class C vehicle, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, any person holding a valid Class C instructional permit may drive a Class C motor vehicle when accompanied by a disabled parent or guardian who has been issued an identification card containing the international handicapped symbol pursuant to Article 8 of this chapter.

(2) A person who has been issued an instruction permit under this subsection and has never been issued a Class D driver's license under subsection (b) of this Code section will become eligible for a Class D driver's license under subsection (b) of this Code section only if such person is at least 17 years of age, has a valid instruction permit which is not under suspension, and, for a period of not less than 12 consecutive months prior to making application for a Class D driver's license, has not been convicted of a violation of Code Section 40-6-391, hit and run or leaving the scene of an accident in violation of Code Section 40-6-270, racing on highways or streets, using a motor vehicle in fleeing or attempting to elude an officer, reckless driving, or convicted of any offense for which four or more points are assessable under subsection (c) of Code Section 40-5-57; provided, however, that a person who is at least 16 years of age and meets all of the other qualifications of this paragraph except for age who has completed an approved driver education training course as provided in subsection (a.2) of Code Section 40-5-22 will be eligible for a Class D driver's license.

(3) This subsection does not apply to instruction permits for the operation of motorcycles.

(b)(1) Any resident of this state who is at least 17 years of age and who, for a period of at least 12 months, had a valid instruction permit issued under subsection (a) of this Code section may apply to the department for a Class D driver's license to operate a noncommercial Class C vehicle if such resident has otherwise complied with all prerequisites for the issuance of such Class D driver's license as provided in subsection (a) of this Code section, provided that a resident at least 17 years of age who has at any age surrendered to the department a valid instruction permit or driver's license issued by another state or the District of Columbia or who has submitted to the department proof, to the satisfaction of the department, of a valid instruction permit or driver's license issued by another state or the District of Columbia may apply his or her driving record under such previously issued permit or driver's license toward meeting the eligibility requirements for a Class D driver's license the same as if such previously issued permit or driver's license were an instruction permit issued under subsection (a) of this Code section; provided, however, that a person who is at least 16 years of age and meets all of the other qualifications of this paragraph except for age who has completed an approved driver education training course as provided in subsection (a.2) of Code Section 40-5-22 may apply for a Class D driver's license.

(2) The department shall, after all applicable requirements have been met, issue to the applicant a Class D driver's license which shall entitle the applicant, while having such license in his or her immediate possession, to drive a Class C vehicle upon the public highways of this state under the following conditions:

(A) Any Class D license holder shall not drive a Class C motor vehicle on the public roads, streets, or highways of this state between the hours of 12:00 Midnight and 5:00 A.M. eastern standard time or eastern daylight time, whichever is applicable; and

(B)(i) Any Class D license holder shall not drive a Class C motor vehicle upon the public roads, streets, or highways of this state when more than three other passengers in the vehicle who are not members of the driver's immediate family are less than 21 years of age.

(ii) During the six-month period immediately following issuance of such license, any Class D license holder shall not drive a Class C motor vehicle upon the public roads, streets, or highways of this state when any other passenger in the vehicle is not a member of the driver's immediate family.

(iii) Notwithstanding the provisions of division (i) of this subparagraph, during the second six-month period immediately following issuance of such license, any Class D license holder shall not drive a Class C motor vehicle upon the public roads, streets, or highways of this state when more than one other passenger in the vehicle who is not a member of the driver's immediate family is less than 21 years of age;

provided, however, that a Class D license holder shall not be charged with a violation of this paragraph alone but may be charged with violating this paragraph in addition to any other traffic offense.

(C) For purposes of this paragraph, the term "immediate family" shall include the license holder's parents and step-parents, grandparents, siblings and step-siblings, children, and any other person who resides at the license holder's residence.

(3) A person who has been issued a Class D driver's license under this subsection and has never been issued a Class C driver's license under this chapter will become eligible for a Class C driver's license under this chapter only if such person has a valid Class D driver's license which is not under suspension and, for a period of not less than 12 consecutive months prior to making application for a Class C driver's license, has not been convicted of a violation of Code Section 40-6-391, hit and run or leaving the scene of an accident in violation of Code Section 40-6-270, racing on highways or streets, using a motor vehicle in fleeing or attempting to elude an officer, reckless driving, or convicted of any offense for which four or more points are assessable under subsection (c) of Code Section 40-5-57 and is at least 18 years of age.

(c) Any resident of this state who is at least 17 years of age may apply to the department for a noncommercial Class M motorcycle instruction permit. The department shall, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his or her immediate possession, to drive a motorcycle or a motor driven cycle upon the public highways for a period of six months; provided, however, that a person who is at least 16 years of age and meets all of the other qualifications of this subsection except for age who has completed an approved driver education training course as provided in subsection (a.2) of Code Section 40-5-22 may apply for a Class M motorcycle instruction permit. A motorcycle instruction permit shall not be valid when carrying passengers, on a limited access highway, or at night.

(d) Any resident of this state who is at least 18 years of age may apply to the department for an instruction permit to operate noncom-

mercial vehicles in Classes E and F. Such permits may be issued only to persons with valid commercial or noncommercial Class C licenses or persons who have passed all required tests for a commercial or noncommercial Class C license. The department shall, after the applicant has successfully passed all parts of the appropriate examination other than the skill and driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having the permit in his or her immediate possession, to operate a vehicle of the appropriate noncommercial class upon the public highways for a period of 12 months when accompanied by a licensed driver, qualified in the vehicle being operated, who is fit and capable of exercising control over the vehicle, and who is occupying a seat beside the driver as an instructor. Prior to being issued a driver's license for Classes E and F, the applicant shall pass a knowledge and skill test for driving a Class E or F vehicle as provided by the commissioner.

(e) The department shall issue a temporary driver's permit to an applicant for a driver's license permitting him or her to operate a specified type or class of motor vehicle while the department is completing its investigation and determination of all facts relative to such applicant's eligibility to receive a driver's license. Such permit must be in his or her immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused. Such permit shall be valid for no more than 45 days. When a license has been refused, the permit shall be returned to the department within ten days of receipt of written notice of refusal.

(f) For the purposes of this Code section, the term "approved driver education training course" shall include those driver education training courses approved by the Department of Driver Services. (Ga. L. 1937, p. 322, art. 4, § 3; Ga. L. 1943, p. 196, § 5; Ga. L. 1951, p. 598, § 2; Ga. L. 1957, p. 103, § 3; Ga. L. 1958, p. 268, § 1; Ga. L. 1959, p. 318, § 1; Code 1933, § 68B-205, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 519, § 8; Ga. L. 1990, p. 1241, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 514, § 2; Ga. L. 1997, p. 760, § 12; Ga. L. 1998, p. 3, § 1; Ga. L. 2001, p. 184, § 1-2; Ga. L. 2005, p. 1461, § 4/SB 226; Ga. L. 2006, p. 343, § 3/SB 637; Ga. L. 2010, p. 199, § 2/HB 258; Ga. L. 2010, p. 932, § 6/HB 396; Ga. L. 2011, p. 355, § 3/HB 269; Ga. L. 2014, p. 409, § 5/SB 392.)

The 2014 amendment, effective July 1, 2014, substituted "5:00 A.M." for "6:00 A.M." in subparagraph (b)(2)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "and" was substituted for a period at the end of subparagraph (b)(2)(A) and a period was

substituted for "; and" in division (b)(2)(B)(i).

Editor's notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2005, p. 1461, § 6/SB 226, not codified by the General Assembly, provides: "The provisions of this Act shall not apply to or otherwise affect any valid license or instructional permit which has been issued to any person by this state and which is in effect on the effective date of this Act. On and after the effective date of this Act, no new license or instructional permit shall be issued except in compliance with the provisions of this Act."

Ga. L. 2005, p. 1461, § 7/SB 226, pro-

vides that the 2005 amendment, as amended by Ga. L. 2006, p. 343, § 3/SB 637, becomes effective on January 1, 2007, subject to available funds. Funds were appropriated at the 2006 session of the General Assembly.

Administrative rules and regulations. — Drivers licenses, Official Compilation of the Rules and Regulations of the State of Georgia, Board of Corrections, Departmental Operations, Rule 125-2-4-13.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 205 (2001).

JUDICIAL DECISIONS

Undocumented aliens. — Statutes barring illegal aliens residing in Georgia from obtaining a Georgia driver's license do not deprive the illegal aliens of equal protection of the laws in violation of the Fourteenth Amendment. *John Doe No. 1 v. Ga. Dep't of Pub. Safety*, 147 F. Supp. 2d 1369 (N.D. Ga. 2001).

Cited in *Spivey v. Sellers*, 185 Ga. App. 241, 363 S.E.2d 856 (1987); *Safeway Ins. Co. v. Holmes*, 194 Ga. App. 160, 390 S.E.2d 52 (1990); *In the Interest of W.N.J.*, 268 Ga. App. 637, 602 S.E.2d 173 (2004); *Partain v. Oconee County*, 293 Ga. App. 320, 667 S.E.2d 132 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92A-401 are included in the annotations for this Code section.

Instructor not exempted by fact student holds license of other class. — Fact that a student holds a valid license of

a class other than the one for which the student is receiving instructions in no way exempts the instructing person or business from the requirements of this chapter. 1974 Op. Att'y Gen. No. 74-101 (decided under former Code 1933, § 92A-401(b)).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 335 et seq.

ALR. — Validity, construction, and ap-

plication of age requirements for licensing of motor vehicle operators, 86 ALR3d 475.

40-5-25. Applications; fees; provisions for voluntary participation in various programs; education of young people.

(a) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department. Every

application shall be accompanied by the proper license fee. The fees shall be as established by the Board of Driver Services, not to exceed:

(1) For instruction permits for Classes C, E, F, and M drivers' licenses and for Class D drivers' licenses	\$ 10.00
(2) For five-year Classes C, E, F, and M noncommercial drivers' licenses	20.00
(2.1) For eight-year Classes C, E, F, and M noncommercial drivers' licenses	32.00
(3) For Classes A, B, C, and M commercial drivers' licenses	20.00
(4) For application for Classes A, B, C, and M commercial drivers' licenses or a Class P commercial driver's instruction permit	35.00
(5) For Class P commercial drivers' instruction permits for Classes A, B, C, and M commercial drivers' licenses	10.00
(6) For Classes A, B, C, and M commercial drivers' licenses, initial issuance requiring a road test ...	70.00
(7) For Classes A, B, C, and M commercial drivers' licenses, initial issuance not requiring a road test	20.00
(8) For renewal of Classes A, B, C, and M commercial drivers' licenses	20.00
(8.1) For renewal of five-year Classes C, E, F, and M noncommercial drivers' licenses	20.00
(8.2) For renewal of eight-year Classes C, E, F, and M noncommercial drivers' licenses	32.00
(9) Initial issuance of Classes A, B, C, and M commercial drivers' licenses and Class P commercial drivers' instruction permits shall include all endorsement fees within the license fee. Each endorsement added after initial licensing	5.00

The commissioner may by rule provide incentive discounts in otherwise applicable fees reflecting cost savings to the department where a license is renewed by means other than personal appearance. The discount for renewal of a Class C or Class M license and any other discounts shall be as determined by the commissioner. Except as provided in Code Section 40-5-36, relating to veterans' licenses, and Code Section 40-5-149, relating to application fees for public school bus drivers, there shall be no exceptions to the fee requirements for a commercial driver's license or a commercial driver's license permit. Notwithstanding any

other provision of this Code section, there shall be no fee whatsoever for replacement of any driver's license solely due to a change of the licensee's name or address, provided that such replacement license shall be valid only for the remaining period of such original license; and provided, further, that only one such free replacement license may be obtained within the period for which the license was originally issued. Any application for the replacement of a lost license pursuant to Code Section 40-5-31 or due to a change in the licensee's name or address submitted within 150 days of the expiration of said license shall be treated as an application for renewal subject to the applicable license fees as set forth in this subsection. The maximum period for which any driver's license shall be issued is eight years.

(b)(1) Each person applying for a Class P commercial or noncommercial instruction permit for a Class A, B, C, E, F, or M driver's license shall pay the applicable license fee prior to attempting the knowledge test for the instruction permit sought. If said person fails to achieve a passing score on the knowledge test, the license fee paid shall be considered a testing fee and retained by the department. Any person failing to achieve a passing score on the knowledge test for an instructional permit shall pay the applicable license fee on each subsequent attempt until successful, at which time said fee shall be his or her license fee.

(2) Each person applying for a Class A, B, or C commercial driver's license shall pay the applicable license fee at the time that he or she schedules his or her appointment for said skills test. If said person fails to appear for his or her scheduled skills test appointment or fails to achieve a passing score on the skills test, the license fee paid shall be considered a testing fee and retained by the department. The person shall pay the applicable license fee on each subsequent attempt until successful, at which time said fee shall be his or her license fee. All fees retained by the department pursuant to this Code section shall be remitted to the general fund.

(c) Every such application shall state the full legal name, date of birth, sex, and residence address of the applicant; shall briefly describe the applicant; shall state whether the applicant has theretofore been licensed as a driver and, if so, when and by what state or country, and whether any such license has ever been suspended, revoked, or refused, and, if so, the date of and reason for such suspension, revocation, or refusal; and shall state such other information as the commissioner may require to determine the applicant's identity, competence, and eligibility. The application shall include any other information as required by paragraph (1) of subsection (a.1) of Code Section 19-11-9.1. The department shall not issue a license until a complete examination of the applicant's record has been completed. The commissioner may

issue such rules and regulations as shall be necessary for the orderly processing of license applications.

(d)(1) The General Assembly finds that it is in the best interest of the state to encourage improved public education and awareness regarding anatomical gifts of human organs and tissues and to address the ever increasing need for donations of anatomical gifts for the benefit of the citizens of Georgia.

(2) The department shall make available to those federally designated organ procurement organizations the name, license number, date of birth, and most recent address of any person who obtains an organ donor driver's license. Information so obtained by such organizations shall be used for the purpose of establishing a state-wide organ donor registry accessible to organ tissue and eye banks authorized to function as such in this state and shall not be further disseminated.

(e)(1) The General Assembly finds that it is in the best interests of the state to encourage improved public education and awareness regarding blindness and to address the need for blindness prevention screenings and treatments for the benefit of the citizens of Georgia.

(2) Each application form for issuance, reissuance, or renewal of a driver's license under subsection (a) of this Code section shall include language permitting the applicant to make a voluntary contribution of \$1.00 to be used for purposes of preventing blindness and preserving the sight of residents of this state. Any such voluntary contribution shall be made at the discretion of the applicant at the time of application in addition to payment of the license fee required under this Code section.

(3) Voluntary contributions made pursuant to this subsection shall be transmitted to the Department of Public Health for use thereby in providing the blindness education, screening, and treatment program provided by Code Section 31-1-23.

(4) This subsection shall become effective on January 1, 2000.

(f) The General Assembly finds that it is in the best interests of this state to encourage alcohol and drug education to inform young people of the dangers involved in consuming alcohol or certain drugs while operating a motor vehicle. The General Assembly further finds that parental or guardian involvement in an alcohol and drug awareness program will assist in reducing the number of young persons involved in driving under the influence of drugs or alcohol. To promote these purposes, where a parent or guardian successfully participates in the parent-guardian component of the alcohol and drug course required by subsection (a) of Code Section 40-5-22 as prescribed in subsection (b) of

Code Section 20-2-142, each parent or guardian shall be entitled to a one-time three-year online motor vehicle report. (Ga. L. 1937, p. 322, art. 4, § 5; Ga. L. 1943, p. 196, § 5; Ga. L. 1947, p. 294, § 1; Ga. L. 1951, p. 157, § 7; Ga. L. 1955, p. 662, § 1; Ga. L. 1955, Ex. Sess., p. 35, § 1; Ga. L. 1961, p. 136, § 2; Ga. L. 1961, p. 433, § 1; Ga. L. 1964, p. 171, § 1; Code 1933, § 68B-206, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 819, § 1; Ga. L. 1989, p. 519, § 9; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 18; Ga. L. 1993, p. 615, § 1; Ga. L. 1994, p. 1390, § 1; Ga. L. 1994, p. 1876, § 1; Ga. L. 1996, p. 228, § 1; Ga. L. 1997, p. 760, § 13; Ga. L. 1999, p. 537, § 2; Ga. L. 2000, p. 951, §§ 5-8, 5-9; Ga. L. 2002, p. 1045, § 3; Ga. L. 2003, p. 415, § 9; Ga. L. 2005, p. 334, § 17-6/HB 501; Ga. L. 2006, p. 72, § 40/SB 465; Ga. L. 2008, p. 171, § 3/HB 1111; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 9, § 1-79/HB 1055; Ga. L. 2010, p. 932, § 7/HB 396; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 72, § 2A/SB 236.)

The 2012 amendment, effective January 1, 2013, added subsection (f).

Cross references. — Prescribed courses — Development and dissemination of instructional materials on effect of alcohol, § 20-2-142. Mandatory instruction concerning alcohol and drug use, § 20-2-144. Blindness education, screening, and treatment program, § 31-1-23. Replacement of licenses, state identification cards, and other documents during periods of natural disaster, § 50-1-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “Notwithstanding any” was substituted for “Notwithstanding, any” in the fourth sentence of the paragraph following the form in subsection (a).

Pursuant to Code Section 28-9-5, in

1994, “driver’s license” was substituted for “drivers’ license” in the first sentence of paragraph (d)(2).

Editor’s notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Teen-age and Adult Driver Responsibility Act.’”

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by that Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

JUDICIAL DECISIONS

Reduced licensing fee for organ donors. — Trial court did not err in denying driver’s license applicant’s request for a finding that O.C.G.A. § 40-5-25(d), which provided for a reduced fee for Class C driver’s license applicants who desired to be organ donors, was unconstitutional as that statute did not violate the driver’s license applicant’s substantive due pro-

cess rights because the statute did not implicate a fundamental right or the driver’s license applicant’s equal protection rights because organ donors were not a suspect class, and, thus, the statute only had to pass the rational basis test, which the statute did. *Barnhill v. State*, 276 Ga. 155, 575 S.E.2d 460 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 103.

C.J.S. — 60 C.J.S., Motor Vehicles, § 344 et seq.

ALR. — Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 108 ALR 1162; 125 ALR 1459.

40-5-26. Applications of minors; distinctive licenses for persons under 21.

(a)(1) The application of any person under the age of 18 years for an instruction permit or driver's license shall be:

(A) Signed and verified by the father, mother, or guardian of the applicant before a person authorized to administer oaths or, in the event there is no parent or guardian, by another responsible adult; or

(B) Signed and verified by a licensed driver training instructor before a person authorized to administer oaths when such instructor is acting as an agent for such purposes on behalf of the father, mother, or guardian of the applicant and such agency is evidenced by permission of such parent or guardian which has been granted in writing and signed and verified by such parent or guardian before a person authorized to administer oaths and on such form as shall be prescribed by rule or regulation of the department.

(2)(A) A person who signed and verified a minor's successful application for an instruction permit or driver's license may subsequently during such minority request revocation of the minor's instruction permit or driver's license by written notice to the department on such form as specified thereby, signed and verified before a person authorized to administer oaths. If the request for revocation is submitted by a licensed driver training instructor acting as an agent on behalf of the father, mother, or guardian of the applicant, such agency must be evidenced by permission for the revocation of such parent or guardian which has been granted in writing and signed and verified by such parent or guardian before a person authorized to administer oaths. Upon receipt of such request and payment of a fee in an amount equivalent to that which was required for issuance of the instruction permit or driver's license, and after a mandatory three business day waiting period, during which the request for revocation may be withdrawn but the fee shall not be returned, the department shall revoke the minor's instruction permit or driver's license.

(B) A minor whose instruction permit or driver's license has been revoked under this paragraph shall not be eligible for issuance of another instruction permit or driver's license until he or she

reaches 18 years of age, unless consent for issuance of an instruction permit or driver's license has been granted as provided by subparagraphs (A) and (B) of paragraph (1) of this subsection upon application of the minor made not sooner than three months after the effective date of revocation.

(C) The provisions of Code Section 40-5-62 shall not apply to a person whose instruction permit or driver's license has been revoked under this paragraph.

(D) A revocation of a minor's instruction permit or driver's license under this paragraph shall not be deemed a revocation for purposes of any increase in insurance rates or cancellation of any policy of motor vehicle insurance for which the minor is not the sole named insured, but such a policy may be amended so as to remove such minor from the list of named insureds under such policy.

(b) The department shall, by rule and regulation, provide that all licenses issued to applicants under 21 years of age shall be so designed as to be readily distinguishable from all other licenses issued to other applicants. After having attained 21 years of age, the holder of any such distinctive license may obtain a new license which shall not be distinctive. Such new license shall be obtained in the same manner and under the same conditions and limitations as are provided in Code Section 40-5-32, relating to renewals of licenses. (Ga. L. 1937, p. 322, art. 4, § 3; Ga. L. 1951, p. 597, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 339, §§ 1-3; Ga. L. 1957, p. 103, § 3; Code 1933, § 68B-207, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1421, § 1; Ga. L. 1982, p. 1862, § 1; Ga. L. 1983, p. 819, § 2; Ga. L. 1984, p. 1070, § 1; Ga. L. 1985, p. 758, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2004, p. 749, § 3; Ga. L. 2005, p. 1461, § 5/SB 226.)

Editor's notes. — Ga. L. 2005, p. 1461, § 7/SB 226, provides that the 2005 amendment becomes effective January 1, 2007, subject to available funds. Funds were appropriated at the 2006 session of the General Assembly.

Ga. L. 2005, p. 1461, § 6/SB 226, not codified by the General Assembly, provides: "The provisions of this Act shall not

apply to or otherwise affect any valid license or instructional permit which has been issued to any person by this state and which is in effect on the effective date of this Act. On and after the effective date of this Act, no new license or instructional permit shall be issued except in compliance with the provisions of this Act."

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 335 et seq.

ALR. — Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 ALR3d 475. Construction and effect of statutes

which make parent, custodian, or other person signing minor's application for vehicle operator's license liable for licensee's negligence or willful misconduct, 45 ALR4th 87.

40-5-27. Examination of applicants.

(a)(1) The department shall examine every applicant for a driver's license, except as otherwise provided in this Code section. Such examination shall include a test of the applicant's eyesight, his or her ability to understand official traffic-control devices, and his or her knowledge of safe driving practices and the traffic laws of this state and shall also include a comprehensive on-the-road driving test during which the applicant shall be required to fully demonstrate his or her ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type or general class of vehicles he or she desires a license to drive.

(2) The on-the-road driving test requirement shall not apply to any applicant for a Class C driver's license who holds a Class D driver's license issued on or after January 1, 2002.

(3) Neither the on-the-road driving test nor the knowledge test shall apply to:

(A) An applicant 18 years of age and older with a valid and current license, or a license that has been expired for less than two years, issued by another state of the United States or the District of Columbia; or

(B) An applicant who is a citizen of a foreign country with which the commissioner has entered into a reciprocal agreement pursuant to subsection (c) of Code Section 40-5-5.

(4) The examination may also include such further physical and mental examination as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. The commissioner may establish by rules and regulations the type of tests or demonstrations to be made by applicants for any class of license.

(b) The department shall make provision for giving an examination either in the county where the applicant resides or at another place reasonably convenient to the applicant. The examination, with the exception of those required for a commercial driver's license, commercial driver's license permit, or noncommercial Class A, B, or M license, shall be given at least once each month in each county of the state.

(c)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, no driver's license shall be issued to any person who does not have a visual acuity of 20/60, corrected or uncorrected, in at least one eye or better and a horizontal field of vision with both eyes open of at least 140 degrees or, in the event that one eye only has usable vision, horizontal field of vision must be at least 70 degrees temporally and 50 degrees nasally.

(2) A person whose visual acuity is less than 20/60 but better than 20/200 using spectacles, contact lenses, or the carrier portion of bioptic spectacles shall be considered eligible for a driver's license if the person is not otherwise disqualified from having a driver's license under the provisions of this article and if:

(A) The person can attain a visual acuity of at least 20/60 through utilizing bioptic telescopes;

(B) The telescopes are prescribed by a licensed optometrist or ophthalmologist;

(C) The person presents documentation of having satisfactorily completed training in the use of the bioptic telescope as certified by the prescribing doctor;

(D) The person presents documentation of an on-the-road evaluation and having satisfactorily completed any recommended training in driving while using bioptic telescopes from a certified driver's license examiner;

(E) The person completes a standard driver's education course while using the bioptic telescopes subsequent to completing evaluation or training with a driver's license examiner; and

(F) The person presents said documentation to a department operated test site and passes a driver's test examination administered by the department.

(3) A person who is licensed to drive using bioptic telescopes shall be subject to possible restrictions placed on his or her license as determined and recommended by the prescribing optometrist or ophthalmologist or the driver's license examiner. Any recommended restrictions shall be reported to the department in writing at the time the person presents himself or herself for a driver's test examination. Restrictions may include daylight driving only, outside rearview mirrors, certain area and time restrictions, no interstate driving, yearly reevaluations by an optometrist or ophthalmologist, and other such restrictions. Any restrictions shall be eligible for review and reconsideration after one year by completing all of the steps described in subparagraphs (A) through (F) of paragraph (2) of this subsection, including completing any additional possible testing under special conditions, as determined by the optometrist or ophthalmologist.

(4) The user of a bioptic telescope shall require renewal of his or her license every four years. However, the person must be reevaluated at least biennially by an optometrist or ophthalmologist. A certification by the optometrist or ophthalmologist that the user's visual acuity, visual field, and eye health remain stable shall be presented to the department at the time of the biennial eye exami-

nation. In the event that changes in vision are determined, the person's license shall expire and the person must successfully repeat all of the steps described in subparagraphs (A) through (F) of paragraph (2) of this subsection in order to have his or her license reinstated. If no significant changes occur in the user's vision at the second biennial examination in a license renewal cycle, the user's license shall be renewed without the necessity of a road test examination or any further eyesight examination.

(d)(1) The department shall authorize licensed driver training schools to conduct knowledge tests, on-the-road driving skills tests, and other tests required for issuance of a driver's license as provided in this subsection. The department shall, prior to approving a licensed driver training school to conduct tests as provided in this subsection, make a determination that the school has been licensed for a minimum of two years and has conducted driver education courses on a full-time basis for such two-year period and that such school meets all other standards which the department may establish as a condition for approval to conduct such tests. The department shall authorize a driver training school licensed pursuant to Chapter 13 of Title 43 and approved by the department to administer the on-the-road driving skills testing provided for in this Code section, provided that the applicant has successfully completed a driver training course which includes a minimum of 30 class hours of instruction and six hours of private in-car training. The department may establish by rules and regulations the type of tests or demonstrations to be made by applicants for any Class P instructional permit, Class C driver's license, or Class D driver's license under this Code section.

(2) The department may authorize public and private high schools to conduct knowledge tests required for issuance of a Class P instructional permit or Class D driver's license or both. (Ga. L. 1937, p. 322, art. 4, § 4; Ga. L. 1951, p. 598, § 3; Code 1933, § 68B-208, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 519, § 10; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 3311, § 2; Ga. L. 1996, p. 1250, § 3; Ga. L. 1997, p. 760, § 14; Ga. L. 2001, p. 184, § 1-3; Ga. L. 2004, p. 749, § 4; Ga. L. 2005, p. 334, § 17-7/HB 501; Ga. L. 2005, p. 525, § 1/HB 613; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2013, p. 281, § 2/HB 475; Ga. L. 2014, p. 710, § 1-7/SB 298.)

The 2013 amendment, effective July 1, 2013, rewrote subsection (a).

The 2014 amendment, effective July 1, 2014, designated the existing provisions of subsection (d) as paragraph (d)(1), and, in paragraph (d)(1), in the first sentence, inserted "knowledge tests," inserted "skills", and added a comma preceding "and other tests required", deleted the former second sentence, which read: "The department may authorize licensed driver training schools to issue driver's licenses to successful applicants as provided in this subsection.", deleted "or is

sue licenses or both" following "tests" twice in the second sentence, inserted "on-the-road driving skills" in the third sentence, and, in the last sentence, inserted "Class P instructional permit," and inserted "driver's license," following "Class C"; and added paragraph (d)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "January 1, 2002" was substituted for "the effective date of such requirement" at the end of the second sentence in subsection (a).

Editor's notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not

apply to offenses committed prior to that date.

Ga. L. 2001, p. 184, § 4-1, not codified by the General Assembly, provides that subsection (a) of this Code section as amended by this Act shall become effective six months after the effective date of appropriation by the General Assembly of sufficient funds for purposes of such amendment. Funds were appropriated effective July 1, 2001, at the 2001 session of the General Assembly.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997). For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 203 (2013).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 205 (2001).

JUDICIAL DECISIONS

Flashing yellow "X" not actionable as nuisance. — Because the meaning of a flashing yellow "X" signal was included within the state's driver's manual and was a standard traffic control device, knowledge thereof was chargeable to the drivers

in the state. Accordingly, as a matter of law, the flashing yellow "X" did not create a continuously hazardous condition amounting to a nuisance. *City of Atlanta v. Metropolitan Atlanta Rapid Transit Auth.*, 262 Ga. 743, 425 S.E.2d 862 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 115.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 339, 343.

ALR. — Physical defect, illness, drowsiness, or falling asleep of motor vehicle operators as affecting liability for injury, 28 ALR2d 12; 93 ALR3d 326; 1 ALR4th 556.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

Liability for automobile accident allegedly caused by driver's blackout, sudden unconsciousness, or the like, 93 ALR3d 326.

Motor vehicle passenger's contributory negligence or assumption of risk where accident resulted from driver's drowsiness, physical defect, or illness, 1 ALR4th 556.

State's liability for improperly licensing negligent driver, 41 ALR4th 111.

40-5-28. (For effective date, see note.) Issuance of licenses; contents; signature required; biological identifiers prohibited; county tag agents; Class E and Class F licenses for volunteer firefighters.

(a) (For effective date, see note.) Except as provided in subsection (c) of this Code section, the department shall, upon payment of the

required fee, issue to every applicant qualifying therefor a driver's license indicating the type or general class of vehicles the licensee may drive, which license shall be upon a form prescribed by the department and which shall bear thereon a distinguishing number assigned to the licensee, a color photograph of the licensee, the licensee's full legal name, either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with a pen and ink immediately upon receipt of the license, and such other information or identification as is required by the department. No license shall be valid until it has been so signed by the licensee. The department shall not require applicants to submit or otherwise obtain from applicants any fingerprints or any other biological characteristic or information which uniquely identifies an individual, including without limitation deoxyribonucleic acid (DNA) and retinal scan identification characteristics but not including a photograph, by any means upon application.

(b) The commissioner may determine the location and manner of issuance of drivers' licenses. Without limiting the generality of the foregoing, it is specifically provided that the commissioner may designate county tag agents, if they so agree, as agents of the department for this purpose and may authorize the issuance of drivers' licenses by county tag agents. No county tag agent shall be required to issue or renew drivers' licenses unless such county tag agent agrees in writing to perform such functions. No county tag agent shall be required to issue or renew drivers' licenses for residents of any county other than the residents of the county for which he or she serves as tax commissioner.

(c) (For effective date, see note.) The department shall make available to qualified applicants who are also volunteer firefighters Class E and Class F drivers' licenses without charge. In order to receive the Class E or Class F endorsement without payment of a fee, the applicant shall provide:

- (1) A copy of his or her firefighter certification indicating that he or she is currently a certified firefighter in good standing; and
- (2) A letter signed by the chief executive officer of the public entity he or she serves which letter appears on such political entity's official agency letterhead and provides that he or she is a volunteer firefighter for such public entity.

The provisions of this subsection shall apply to both original and renewal applicants for Class E and Class F licenses, as these classes are identified in Code Section 40-5-23. (Code 1933, § 68B-209, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1996, p. 1250, § 4; Ga. L. 2005, p. 334, § 17-8/HB 501; Ga. L. 2005, p. 1122, § 3/HB 577; Ga. L. 2010, p. 932, § 8/HB 396; Ga. L. 2014, p. 710, § 6-1/SB 298.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2015. For version of this Code section in effect until January 1, 2015, see the 2014 amendment note.

The 2014 amendment, effective January 1, 2015, substituted “Except as provided in subsection (c) of this Code section, the” for “The” at the beginning of subsection (a) and added subsection (c).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2005, in the last sentence of subsection (a), a comma was deleted following “limitation” and a comma was added following “photograph”.

Law reviews. — For comment, “You Better Smile When You Say ‘Cheese!’: Whether the Photograph Requirement for Drivers’ Licenses Violates the Free Exercise Clause of the First Amendment,” see 61 Mercer L. Rev. 611 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of fingerprint requirement. — Requiring applicants to submit fingerprints does not violate constitutional rights. 1997 Op. Att’y Gen. No. U97-7.

Privacy Act of 1974 (5 U.S.C. § 552a) does not apply to the provisions of O.C.G.A. § 40-5-28 regarding fingerprinting. 1997 Op. Att’y Gen. No. U97-33.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 100.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 353 et seq.

40-5-28.1. Use of social security numbers.

No license or permit issued or renewed on or after January 1, 2007, pursuant to this article shall contain the social security number of the licensee or permit holder. (Code 1981, § 40-5-28.1, enacted by Ga. L. 1997, p. 1443, § 1; Ga. L. 2006, p. 449, § 3/HB 1253.)

Editor’s notes. — This Code section became effective July 1, 1997, and is ap-

plicable to licenses, permits, and identification cards issued on or after that date.

40-5-29. License to be carried and exhibited on demand.

(a) Every licensee shall have his or her driver’s license in his or her immediate possession at all times when operating a motor vehicle. Any person who has a receipt issued by the department reflecting issuance, renewal, replacement, or reinstatement of his or her driver’s license in his or her immediate possession shall be considered to have such license in his or her immediate possession if such is confirmed to be valid by the department or through the Georgia Crime Information Center. The department may establish by rule and regulation the term of such receipt. Notwithstanding the foregoing, no receipt issued by the department shall be accepted as proof of such person’s identity for any other purpose, including but not limited to proof of voter identification or proof of age for purposes of purchasing alcoholic beverages.

(b) Every licensee shall display his or her license upon the demand of a law enforcement officer. A refusal to comply with such demand not only shall constitute a violation of this subsection but shall also give rise to a presumption of a violation of subsection (a) of this Code section and of Code Section 40-5-20.

(c) A person convicted of a violation of subsection (a) of this Code section shall be fined no more than \$10.00 if he or she produces in court a license theretofore issued to him or her and valid at the time of his or her arrest. (Ga. L. 1937, p. 322, art. 4, § 7; Ga. L. 1951, p. 598, § 4; Code 1933, § 68B-210, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2014, p. 710, § 2-2/SB 298.)

The 2014 amendment, effective July 1, 2014, inserted “or her” throughout this Code section; added the second through fourth sentences in subsection (a); and inserted “or she” in subsection (c).

Cross references. — Requirement of compliance with lawful order or direction of officer authorized to direct, control, or regulate traffic, § 40-6-2.

JUDICIAL DECISIONS

Legislative intent in reducing the punishment for failure of a licensee to have a driver’s license in the licensor’s possession when operating a vehicle to a fine of ten dollars precluded imposition of a sentence to a consecutive 12 months’ probation. *Crain v. State*, 197 Ga. App. 729, 399 S.E.2d 289 (1990).

Presumption upon failure to have license in possession. — There existed no reversible error when the defendant was accused of (and subsequently convicted of) driving a vehicle without a valid license (see O.C.G.A. § 40-5-20), but the offense on which the jury was charged concerned the failure to have a valid license in one’s possession at all times while operating a motor vehicle and the presumption thereby raised that the driver had no valid license. *Roberts v. State*, 173 Ga. App. 614, 327 S.E.2d 743 (1985).

Limiting O.C.G.A. § 40-5-20(a)’s safe harbor to the production at trial of a Georgia driver’s license was a rational part of the enforcement scheme, allowing the presumption created by a violation of O.C.G.A. § 40-5-29(b) to be automatically rebutted only when the evidence that the driver in fact had a valid license when cited was most indisputable and readily evaluated by the factfinder. *Castillo-Solis v. State*, 292 Ga. 755, 740 S.E.2d 583 (2013).

Presumption upon failure to produce license upon request. — Unexplained refusal of the defendant to produce a license upon request by the officer authorizes the presumption that the defendant does not possess a valid license. *Smith v. State*, 158 Ga. App. 663, 281 S.E.2d 631, overruled on other grounds, *Tanner v. State*, 160 Ga. App. 266, 287 S.E.2d 268 (1981).

Defeating presumption of no valid license. — While a failure to show a license on request of a law enforcement officer may give rise to the presumption that the driver does not have a valid license, this presumption is defeated when the license is produced at the trial. *McCook v. State*, 145 Ga. App. 3, 243 S.E.2d 289 (1978).

Charge to jury. — Because the defendant was being tried for “driving without a valid license” under O.C.G.A. § 40-5-20, giving a clarifying charge to the jury on O.C.G.A. § 40-5-29 was not error. *Duckworth v. State*, 223 Ga. App. 250, 477 S.E.2d 336 (1996), *aff’d*, 268 Ga. 566, 492 S.E.2d 201 (1997).

Jury question. — When there was conflicting testimony as to whether the arresting officer asked to see defendant’s driver’s license, although the production of a valid license at trial operated to defeat

the statutory presumption under subsection (b) of O.C.G.A. § 40-5-29, the charge of operating without a valid driver's license was proper and the conflicting evidence required submission to the jury. *Johnson v. State*, 165 Ga. App. 773, 302 S.E.2d 626 (1983).

Evidence was sufficient to support a conviction since: (1) after the defendant was stopped at a roadblock, an officer asked the defendant for defendant's license and proof of insurance and the defendant responded by asking what the defendant had done; (2) the defendant was told that the defendant had done nothing, but that the papers still needed to be checked; (3) the defendant then stated that the defendant had not committed a crime and asked for the officer's badge number; (4) the officer gave this information to the defendant and then told the

defendant that the defendant needed to produce the defendant's papers and that the defendant would otherwise be arrested; (5) the defendant then asked for the code section which permitted the officer to ask for the defendant's license; and (6) after this went on for several minutes, another officer came over and arrested the defendant. *Johnson v. State*, 234 Ga. App. 218, 507 S.E.2d 13 (1998).

Cited in *Thomason v. Harper*, 162 Ga. App. 441, 289 S.E.2d 773 (1982); *Coop v. State*, 186 Ga. App. 518, 367 S.E.2d 836 (1988); *Gibson v. State*, 187 Ga. App. 769, 371 S.E.2d 413 (1988); *Ward v. State*, 188 Ga. App. 372, 373 S.E.2d 65 (1988); *Rogers v. State*, 206 Ga. App. 654, 426 S.E.2d 209 (1992); *Rocha v. State*, 250 Ga. App. 209, 551 S.E.2d 82 (2001); *Gantt v. State*, 263 Ga. App. 102, 587 S.E.2d 255 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 105, 106.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 347, 348.

ALR. — Validity and construction of

statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 ALR3d 506.

40-5-30. Restricted licenses.

(a) Upon issuing a driver's license, the department shall have authority, whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. The commissioner may promulgate such rules and regulations as are necessary to implement this Code section.

(b) The department may either issue a special restricted license or set forth such restrictions upon the usual license form.

(c) No person shall operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him or her; provided, however, that at the time of the hearing on such offense, if such person was charged with driving in violation of a restriction requiring that he or she wear eyeglasses or contact lenses, such person shall not be guilty of such offense if he or she presents the trial court with admissible medical or other evidence sufficient to

demonstrate to the satisfaction of the trial court that he or she no longer suffers from the vision condition that resulted in the imposition of such restriction.

(d) Upon a person being convicted of a violation of this Code section, the court may order the department to suspend such person's license for a period not to exceed six months. The court shall determine the length of such suspension and shall report such suspension and the length thereof to the department. The department shall reinstate the license at the end of the suspension period upon receipt of a reinstatement fee of \$210.00 or \$200.00 if paid by mail. (Code 1933, § 68B-211, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-10; Ga. L. 2006, p. 449, § 4/HB 1253; Ga. L. 2009, p. 679, § 2/HB 160; Ga. L. 2010, p. 877, § 1/SB 6; Ga. L. 2010, p. 893, § 1/HB 1224.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, subsection (d), as enacted by Ga. L. 2010, p. 893, § 1/HB 1224, was redesignated as subsection (c).

Administrative rules and regula-

tions. — Licenses restricted as to use for physical impairment, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Rule 375-3-1-.04.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 40-5-30(c) does not appear to be an

offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

40-5-31. Replacement permits or licenses.

(a) In the event that an instruction permit or a driver's license issued under this chapter is lost or destroyed, the person to whom the same was issued may upon payment of the required fee and upon furnishing proof satisfactory to the department that such permit has been lost or destroyed:

- (1) Obtain a new permit or license; or
- (2) Obtain a replacement permit or license.

A new permit obtained under this Code section shall be obtained in the same manner and under the same conditions and limitations as provided in Code Section 40-5-24. A new license obtained under this Code section shall be obtained in the same manner and under the same conditions and limitations as provided in Code Section 40-5-32, relating to renewals of licenses. A replacement permit or license obtained under this Code section shall be issued only for the remaining period for which the original permit or license was issued for a fee of \$5.00, and no examination or eyesight test shall be required to obtain such replacement permit.

(b) The department shall issue a temporary permit or driver's license to each individual who has lost by misplacement, and not by revocation or suspension, his or her instruction permit or driver's license and who has made application under oath on a form furnished by the department which states that the applicant presently has a valid permit or license which has been lost or misplaced. In lieu of the applicant's signature on a form, any application for the issuance of a replacement license submitted electronically shall contain an acknowledgment and attestation under penalty of perjury that he or she meets each requirement of this Code section.

(c) A temporary permit or license issued pursuant to this Code section shall be valid for 30 days but may be renewed in the event the applicant's new permit or license has not been received within such time.

(d) Any person who falsely swears or falsely makes the oath provided for in subsection (b) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1969, p. 991, § 1; Code 1933, § 68B-212, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 819, § 3; Ga. L. 1989, p. 519, § 11; Ga. L. 1990, p. 2048, § 4; Ga. L. 1996, p. 1250, § 5; Ga. L. 2000, p. 469, § 1; Ga. L. 2005, p. 334, § 17-9/HB 501.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles,
§ 340 et seq.

40-5-32. Expiration and renewal of licenses; reexamination required.

(a)(1) Except as otherwise provided in this Code section, every driver's license shall expire on the licensee's birthday in the fifth year following the issuance of such license. Notwithstanding the foregoing, any commercial license that contains an H or X endorsement as defined in subsection (c) of Code Section 40-5-150 shall expire on the date of expiration of the licensee's security threat assessment conducted by the Transportation Security Administration of the United States Department of Homeland Security. An applicant for a Class C, E, F, or M noncommercial driver's license who is under age 60 shall at the applicant's option apply for a license which shall expire on the licensee's birthday in the fifth or eighth year following the issuance of such license. Every such license shall be renewed on or before its expiration upon application, payment of the required fee, and, if applicable, satisfactory completion of the examination required or authorized by subsection (c) of this Code section.

(2) Except as otherwise provided by subsection (c) of this Code section, every veteran's or honorary license shall expire on the

licensee's birthday in the eighth year following the issuance thereof until the holder reaches age 65 and shall thereafter be subject to renewal pursuant to paragraph (1) of this subsection on or before his or her birthday every five years. The department may allow a veteran or honorary license holder to retain his or her expired veteran's or honorary license as a souvenir.

(3) The commissioner shall issue such rules and regulations as are required to enforce this subsection.

(b) An application for driver's license renewal may be submitted by means of:

(1) Personal appearance before the department; or

(2) Subject to rules or regulations of the department which shall be consistent with considerations of public safety and efficiency of service to licensees, means other than such personal appearance which may include without limitation by mail or electronically. The department may by such rules or regulations exempt persons renewing drivers' licenses under this paragraph from the license surrender requirement of subsection (c) of Code Section 40-5-20.

(c)(1) The department shall require every person who is age 64 or older applying for renewal of a driver's license to take and pass successfully such test of his or her eyesight as the department shall prescribe.

(2) The commissioner may issue such rules and regulations as are necessary to implement this subsection. (Ga. L. 1937, p. 322, art. 4, § 5; Ga. L. 1943, p. 196, § 5; Ga. L. 1947, p. 294, § 1; Ga. L. 1951, p. 157, § 7; Ga. L. 1955, p. 662, § 1; Ga. L. 1955, Ex. Sess., p. 35, § 1; Ga. L. 1961, p. 136, § 2; Ga. L. 1961, p. 433, § 1; Code 1933, § 68B-213, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 307, § 2; Ga. L. 1977, p. 576, § 1; Ga. L. 1989, p. 519, § 12; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-11; Ga. L. 2002, p. 1045, § 2; Ga. L. 2004, p. 749, § 5; Ga. L. 2005, p. 334, § 17-10/HB 501; Ga. L. 2010, p. 932, § 9/HB 396.)

Cross references. — Veterans' licenses, honorary licenses, generally, § 40-5-36.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 277 (2002).

JUDICIAL DECISIONS

Duties of holders of veterans' licenses. — From the language employed in O.C.G.A. Ch. 5, T. 40 since 1975, it is apparent that the legislature contemplated that the veterans' licenses would expire in the same way as other licenses

and must be renewed every four years. *Littlejohn v. State*, 165 Ga. App. 562, 301 S.E.2d 917 (1983).

Holders of veterans' licenses must comply with vision test requirements of subsection (b) (now subsection (c)) of O.C.G.A.

§ 40-5-32. Littlejohn v. State, 165 Ga. App. 562, 301 S.E.2d 917 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 122.

C.J.S. — 60 C.J.S., Motor Vehicles, § 341 et seq.

40-5-33. Change of address or name.

Whenever any person, after applying for or receiving a driver's license, shall move from the address named in such application or in the license issued to him or her or when the name of a licensee is changed by marriage or otherwise, such person shall apply to the department for a license showing the correct name or address within 60 days. Failure to change the name or address shall not deem the license invalid. The commissioner may determine the locations at which applications shall be accepted for applications due to change of name or address. Without limiting the generality of the foregoing, it is specifically provided that the commissioner may designate county tag agents, if they so agree, as agents of the department for this purpose. (Code 1933, § 68B-214, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 519, § 13; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 1876, § 2; Ga. L. 1995, p. 920, § 2; Ga. L. 2005, p. 334, § 17-11/HB 501.)

JUDICIAL DECISIONS

Violation of statute did not justify continued detention. — Even if it was a crime to violate O.C.G.A. § 40-5-33, a defendant's purported violation of the statute did not justify the continued detention of the defendant after a traffic

stop; the deputy who stopped the defendant could have given the defendant a verbal warning instead of waiting to be brought a written warning book. *Bennett v. State*, 285 Ga. App. 796, 648 S.E.2d 126 (2007).

40-5-34. Driver License Advisory Board.

(a) The commissioner is authorized to appoint a Driver License Advisory Board.

(b) The Driver License Advisory Board shall advise the commissioner on medical criteria and vision standards relating to the licensing of drivers under this chapter.

(c) If the department has cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, it may obtain the advice of the Driver License Advisory Board. The Driver License Advisory Board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the Driver License Advisory Board or any other qualified person it may designate. The licensed driver or applicant may

cause a written report to be forwarded to the Driver License Advisory Board by a person of his choice who is licensed under Chapter 30 of Title 43 and Article 2 of Chapter 34 of Title 43 to diagnose and treat disorders of humans. Such report shall be given due consideration by the Driver License Advisory Board.

(d) Members of the Driver License Advisory Board and other persons making examinations shall not be held liable for their opinions and recommendations presented pursuant to subsection (c) of this Code section.

(e) Reports received or made by the Driver License Advisory Board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for the confidential use of the Driver License Advisory Board or the department and may not be divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under subsection (c) of Code Section 40-5-59 and Code Section 40-5-66, and any person conducting an examination pursuant to subsection (c) of this Code section may be compelled to testify concerning his observations and findings in such proceedings. (Code 1933, § 68B-216, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.)

Administrative rules and regulations. — Driver's License Advisory Board, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Department of Driver Services, Driver License Services, Chapter 375-3-5.

JUDICIAL DECISIONS

Applicability of subsection (c). — Subsection (c) of former Code 1933, § 68B-216 applied only when a medical condition formed the basis for not issuing or reissuing a license, not when the action of the department in revoking a driver's

license was based on the driver's repeated convictions of driving while under the influence of alcohol. *Camp v. Department of Pub. Safety*, 241 Ga. 419, 246 S.E.2d 296 (1978) (see O.C.G.A. § 40-5-34).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 23, 102, 103, 120.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 29 et seq., 322 et seq.

ALR. — Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

40-5-35. Reports by physicians and vision specialists; procedure when person found unqualified to be licensed.

(a) The Driver License Advisory Board appointed by the department shall define disorders characterized by lapses of consciousness or other mental or physical disabilities affecting the ability of a person to drive

safely for the purpose of the reports required by this Code section, and the commissioner may use these definitions to promulgate regulations making such disorders and disabilities disqualifications, under certain conditions, for obtaining or keeping a driver's license for any class or classes of vehicles; provided, however, that a person shall not be disqualified from obtaining a noncommercial Class C driver's license for having had an episode of lapsed or altered consciousness due to epilepsy unless such an episode occurred within the immediately preceding six-month period.

(b) All physicians licensed under Article 2 of Chapter 34 of Title 43 to diagnose and treat disorders and disabilities defined by the commissioner may report to the department the full name, date of birth, and address of any person with a disability which would render such person incapable of operating a motor vehicle safely.

(c) All other persons licensed under Chapter 30 of Title 43 to diagnose and treat disorders defined by the commissioner may report to the department the full name, date of birth, and address of any person with a disability which would render such person incapable of operating a motor vehicle safely.

(d) The reports required by this Code section shall be confidential and shall be used solely for the purpose of determining the qualifications of any person to drive a motor vehicle on the highways of this state. No civil or criminal action may be brought against any person or agency for providing the information required in this Code section. The reports, or any reference to the reports, shall not be included in any abstract prepared pursuant to Code Section 40-5-2.

(e) Reports received or made by the Driver License Advisory Board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for the confidential use of the Driver License Advisory Board or the department and may not be divulged to any person or used as evidence in any civil or criminal trial, except that the reports may be admitted in proceedings conducted pursuant to this Code section and Code Section 40-5-66.

(f) Whenever the department shall determine that a person is unqualified to be licensed, the department shall inform such person in writing and give him an opportunity to request a hearing, in writing, within 15 days. If no hearing is requested within the 15 day period as specified in this subsection, the right to this hearing shall be waived and the license of the person shall be revoked. The person may request an opinion of the Driver License Advisory Board as provided in subsection (c) of Code Section 40-5-34. The department may not grant any exceptions to any regulations issued pursuant to subsection (a) of this Code section. The scope of the hearing shall determine, upon

evidence and testimony submitted, if the driver is competent to drive a motor vehicle as defined in this title. No driving privileges shall be revoked unless the department shows that the driver had disorders characterized by lapses of consciousness or other mental or physical disabilities affecting his ability to drive safely. The hearing shall be informal and an appeal shall be as provided for in Code Section 40-5-66. (Code 1933, § 68B-217, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 890, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 13; Ga. L. 2000, p. 951, § 5-12; Ga. L. 2000, p. 1313, § 2.)

JUDICIAL DECISIONS

Cited in *Camp v. Department of Pub. Safety*, 241 Ga. 419, 246 S.E.2d 296 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 120 et seq.

ALR. — Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

40-5-36. Veterans' licenses, honorary licenses, and other distinctive licenses.

(a) Except as specifically provided in this chapter, no part of this chapter shall be interpreted as affecting the rights and privileges of a person holding a veteran's, honorary, or distinctive license, and nothing in this chapter shall be construed so as to authorize the department to impose any charge or fee of any type whatsoever for the issuance or renewal of a veteran's, honorary, or distinctive license; provided, however, that the commissioner may issue regulations on types and classes of vehicles which may be operated by the holder of such license.

(b) The commissioner shall establish by rules and regulations the proof required to be produced by an applicant for a veteran's, honorary, or distinctive license. The contents of such license shall be the same as for any other license. The forms upon which such licenses are issued shall be such that the licenses are of a permanent nature, provided that nothing in this subsection shall authorize the department to require any person holding a veteran's or honorary license before January 1, 1976, to surrender such license. Veterans', honorary, and distinctive licenses shall not be subject to any fees.

(c) Veterans' licenses may be issued to:

(1) Veterans who were residents of Georgia at the time of enlistment or commissioning and are residents at the time of application for the license, or who have been residents of Georgia for at least two

years immediately preceding the date of application for the license, who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or any conflict when personnel were committed by the President of the United States, whether or not such veteran was assigned to a unit or division which directly participated in such war or conflict, except for periodic transfer from reserve status to active duty status for training purposes, and who were discharged or separated under honorable conditions; and

(2) All members or former members of the National Guard or reserve forces who have 20 or more years' creditable service therein.

(d) Honorary licenses may be issued to:

(1) A resident of Georgia who is the surviving spouse of a veteran as defined by paragraph (1) of subsection (c) of this Code section. Any license to such spouse shall be valid only as long as that person remains unmarried; or

(2) A resident of Georgia who is the spouse of a veteran who would be qualified to receive a veteran's license but who is disabled to the extent that he or she cannot operate a motor vehicle.

(e) A distinctive license may be issued to any member of the Georgia National Guard in good standing who has completed at least one year of satisfactory service. The department shall have the authority to cancel the distinctive license of any person upon receipt of written notice from the adjutant general who shall notify the department that the person is no longer a member of the Georgia National Guard in good standing. (Ga. L. 1949, p. 1152, §§ 2-5; Ga. L. 1966, p. 546, §§ 3-7, 12; Ga. L. 1966, p. 553, § 2; Code 1933, § 68B-218, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1978, p. 2191, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 1496, § 1; Ga. L. 1994, p. 393, § 3; Ga. L. 2000, p. 951, § 5-13; Ga. L. 2004, p. 471, § 10.)

JUDICIAL DECISIONS

Issuance not constituting contract.

— Issuance of veterans' license under statute providing for permanent veterans' licenses did not constitute contract between a veteran and the state. *Littlejohn v. State*, 165 Ga. App. 562, 301 S.E.2d 917 (1983).

Renewal of licenses. — From the language employed in O.C.G.A. Ch. 5, T. 40 since 1975, it is apparent that the legislature contemplated that the veterans' licenses would expire in the same way as

other licenses and must be renewed every four years. *Littlejohn v. State*, 165 Ga. App. 562, 301 S.E.2d 917 (1983).

Surrender of licenses. — Provision in subsection (b) of O.C.G.A. § 40-5-36, that holders of veterans' licenses issued prior to 1976 may not be compelled to surrender the license, does not mean that veterans' licenses issued prior to 1976 do not expire but rather that holders of such licenses may not be compelled to permanently physically relinquish those licenses. Nei-

ther the provision for renewal nor the provision for temporary retention of a license in lieu of bond amounts to a requirement that a licensee "surrender" the license. *Littlejohn v. State*, 165 Ga. App. 562, 301 S.E.2d 917 (1983).

40-5-37. Expiration of active duty service members' licenses.

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard who is on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose Georgia driver's license expired while such service member was serving on active duty outside the state shall be permitted to operate a motor vehicle in accordance with such expired license and shall not be charged with a violation of Code Section 40-5-20 for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. The service member must present to the department either a copy of the official military orders or a written verification signed by the service member's commanding officer to waive charges. (Code 1981, § 40-5-37, enacted by Ga. L. 2005, p. 213, § 5/SB 258.)

40-5-38. Notation of post traumatic stress disorder.

(a) Members of the armed services and veterans who have been diagnosed with post traumatic stress disorder may request to have a notation of such diagnosis placed on his or her driver's license. Such applicant shall present the department with a sworn statement from a person licensed to practice medicine or psychology in this state verifying such diagnosis.

(b) The commissioner shall by rules and regulations establish procedures necessary to carry out the provisions of this Code section including, without limitation, application forms to include a waiver of liability for the release of any medical information and an appropriate symbol to be placed on the drivers' licenses. (Code 1981, § 40-5-38, enacted by Ga. L. 2010, p. 1013, § 1/SB 419.)

40-5-39. Endorsement on license of limousine chauffeur; requirements; term.

(a) The department shall endorse the driver's license of any approved limousine chauffeur employed by a limousine carrier. In order to be eligible for such endorsement, an applicant shall:

(1) Be at least 18 years of age;

(2) Possess a valid Georgia driver's license which is not limited as defined in Code Section 40-5-64;

(3) Not have been convicted, been on probation or parole, or served time on a sentence for a period of ten years previous to the date of application for any felony or any other crime of moral turpitude or a pattern of misdemeanors that evidences a disregard for the law unless he or she has received a pardon and can produce evidence of same. For the purposes of this paragraph, a plea of nolo contendere shall be considered to be a conviction, and a conviction for which a person has been free from custody and free from supervision for at least ten years shall not be considered a conviction unless the conviction is for a dangerous sexual offense which is contained in Code Section 42-1-12 or the criminal offense was committed against a victim who was a minor at the time of the offense;

(4) Submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and

(5) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law.

(b) Such endorsement shall be valid for the same term as such person's driver's license, provided that each person seeking renewal of a driver's license with such endorsement shall submit to a review of his or her criminal history for verification of his or her continued eligibility for such endorsement prior to making application for such renewal using the same process set forth in subsection (a) of this Code section. If such person no longer satisfies the background requirements set forth herein, he or she shall not be eligible for the inclusion of such endorsement on his or her driver's license, and it shall be renewed without the endorsement.

(c) Every chauffeur employed by a limousine carrier shall have his or her Georgia driver's license with the prescribed endorsement in his or her possession at all times while operating a motor vehicle of a limousine carrier.

(d) The department is authorized to promulgate rules and regulations as necessary to implement this Code section. (Code 1981, § 40-5-39, enacted by Ga. L. 2012, p. 580, § 3/HB 865.)

Effective date. — This Code section became effective July 1, 2012.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, a misspelling of “driver’s” was corrected in the last sentence of subsection (b).

Administrative rules and regula-

tions. — Chauffeur license endorsement requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver Training and Driver Improvement, Rule 375-5-5-.03.

ARTICLE 3

CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

Cross references. — Procedure for suspension of driver’s license for failure or refusal to submit to inspection for determination of compliance with vehicle size, weight, and other laws, T. 40, C. 13. Suspension of drivers’ licenses for failure to obtain motor vehicle insurance, § 40-5-70 et seq. Suspension of driver’s license for failure to satisfy judgment rendered in action arising out of motor vehicle accident, § 40-9-60 et seq. Prosecution of traffic offenses, T. 40, C. 13.

Editor’s notes. — Code Sections 40-5-67 through 40-5-69, which became effective in this article January 1, 1991, were formerly contained in Article 3A, pertaining to the disposition of licenses of persons driving under the influence of alcohol or drugs. The former Article 3A

consisted of Code Sections 40-5-67 through 40-5-73 and was based on Ga. L. 1983, p. 1000, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1984, p. 797, § 3; Ga. L. 1985, p. 758, §§ 10 and 11, Ga. L. 1989, p. 14, § 40; and Ga. L. 1990, p. 1154.

Administrative rules and regulations. — Revocation and Suspension, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Chapter 375-3-3.

Law reviews. — For note on 1993 amendment of this article, see 10 Ga. St. U.L. Rev. 169 (1993). For note on the 1994 amendments of Code Sections 40-5-58, 40-5-64, 40-5-67 to 40-5-67.2 of this article, see 11 Ga. St. U.L. Rev. 215 (1994).

JUDICIAL DECISIONS

Suspension of license by court. — Although the Department of Public Safety has the authority to cancel, suspend, or revoke a driver’s license under certain circumstances, O.C.G.A. Art. 3, Ch. 5, T. 40 does not purport to deprive a court of competent jurisdiction of the authority to suspend a driver’s license as a condition of probation. *Brock v. State*, 165 Ga. App. 150, 299 S.E.2d 71 (1983).

Issuance of limited permit. — There is no authority for issuance of a limited permit to a person currently ineligible for a license due to a conviction of driving with a revoked license. *Hardison v. Popham*, 151 Ga. App. 143, 259 S.E.2d 149 (1979).

Cited in *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 116 et seq.

ALR. — Validity, construction, and application of provision for revocation or suspension of driver’s license because of

conviction of traffic violation in another state, 87 ALR2d 1019.

Ordinance providing for suspension or revocation of state-issued driver’s license as within municipal power, 92 ALR2d 204.

Necessity of notice and hearing before

revocation or suspension of motor vehicle driver's license, 60 ALR3d 361.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 ALR3d 572.

State's liability to one injured by improperly licensed driver, 41 ALR4th 111.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, 18 ALR5th 542.

40-5-50. Authority of department to cancel license or identification card.

The department is authorized to cancel any driver's license or personal identification card issued by the department pursuant to Code Section 40-5-100 upon determining that the holder of such license or identification card was not entitled to the issuance thereof under this chapter or failed to give the required or correct information in the application for such license or identification card. (Code 1933, § 68B-301, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 920, § 3; Ga. L. 2000, p. 951, § 5-14.)

JUDICIAL DECISIONS

Cited in *Sultenfuss v. State*, 169 Ga. App. 618, 314 S.E.2d 459 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 117.

C.J.S. — 60 C.J.S., Motor Vehicles, § 353 et seq.

ALR. — Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 125 ALR 1459.

Validity, construction, and application of provision for revocation or suspension

of driver's license because of conviction of traffic violation in another state, 87 ALR2d 1019.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

Admissibility, in motor vehicle license suspension proceedings, or evidence obtained by unlawful search and seizure, 23 ALR5th 108.

40-5-51. Suspension of driving privilege of nonresident; reporting convictions, suspensions, and revocations of nonresidents.

(a) The privilege of driving a motor vehicle on the highways of this state given to a nonresident under this chapter shall be subject to suspension or revocation by the department only when suspension or revocation is required by law for the violation. No points shall be assessed as provided in Code Section 40-5-57 for any violation committed by a nonresident.

(b) The department is required, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(c) When a nonresident's operating privilege is suspended or revoked, the department shall forward a certified copy of the record of such action to the motor vehicle administrator in the state wherein such person resides. (Code 1933, § 68B-302, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2004, p. 749, § 6.)

Cross references. — Jurisdiction of state over persons temporarily traveling in state, § 50-2-21.

JUDICIAL DECISIONS

Failure to comply with reporting requirements. — Any failure by the Department of Transportation in complying with the reporting requirements of O.C.G.A. § 40-5-51 pertaining to suspension or revocation of operating privileges of nonresident motorists did not diminish the fact that former O.C.G.A. § 40-5-55(c), in effect at the time of the offense, evoked procedures at the time of defendant's arrest for immediate suspension of any person's driving privileges upon refusal to submit to the chemical test prescribed by O.C.G.A. § 40-5-55(a); consequently, since the trial transcript revealed that the deputy advised defendant at the time of arrest of defendant's options pursuant to Georgia's implied consent law, there was no basis for excluding evidence of the results of the state-administered breath test. *Anthony v. State*, 211 Ga. App. 622, 441 S.E.2d 70 (1993), overruled on other grounds, *State v. Coleman*, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Consent obtained by misleading information. — Police officer's warning to nonresident defendant that "Under OCGA §§ 40-5-55 and 40-5-153, you will lose your privilege to operate a motor vehicle from six to twelve months should you refuse to submit to the designated State administered chemical test" omitted the crucial fact that refusal to take the test

would affect defendant's ability to drive "on the highways of this state." Thus, the defendant was deprived of making an informed choice, and the test results were inadmissible; overruling, *Anthony v. State*, 211 Ga. App. 622, 441 S.E.2d 70 (1993) and *State v. Reich*, 210 Ga. App. 407, 436 S.E.2d 703 (1993). *State v. Coleman*, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Incorrect information harmless. — Arresting officer's incorrect statement to a motorist arrested for DUI that the motorist's Florida driver's license would be suspended "for one year tonight" upon the motorist's refusal to submit to chemical tests was harmless since the driver had refused to take the tests before the officer made the incorrect statement. *Rojas v. State*, 235 Ga. App. 524, 509 S.E.2d 72 (1998).

Surrender of out-of-state license was improper. — Even if a defendant's speeding conviction were affirmed, O.C.G.A. § 40-5-51(a) provided that no points were to be assessed for any violation committed by a non-resident; accordingly, even if the conviction had been proper, the trial court erred in ordering the defendant to surrender the defendant's Texas driver's license. In the *Interest of R.G.*, 272 Ga. App. 276, 612 S.E.2d 94 (2005).

Cited in *Hale v. State*, 188 Ga. App. 524, 373 S.E.2d 250 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Forwarding of records upon conviction for driving under the influence. — Georgia law requires that when non-resident is convicted of driving under the influence the court forward the non-resident's driver's license to the Georgia Department of Public Safety, with the license to be forwarded to the non-resident's home state along with the record of conviction and record of any

action taken by the Department of Public Safety. 1986 Op. Att'y Gen. No. U86-15.

Georgia law requires that when a non-resident person is charged with driving under the influence the arresting officer is to take the driver's license, attach it to the court's copy of the citation, and forward it to the appropriate court, as would be done with a Georgia driver. 1986 Op. Att'y Gen. No. U86-16.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 355.

40-5-52. Suspension of license or operating privilege for conduct in another state.

(a) The department shall suspend, as provided in Code Section 40-5-63, the license of any resident of this state and may suspend a nonresident's operating privilege, upon receiving notice of a conviction in another state of an offense described in Code Section 40-5-54 or Code Section 40-6-391 or any drug related offense.

(b) The department is authorized to suspend or revoke the license of any resident or the operating privilege of any nonresident upon receiving notice of the conviction of such person in another state of an offense other than those described in Code Section 40-5-54 or Code Section 40-6-391 which, if committed in this state, would be grounds for the suspension or revocation of a driver's license.

(c) The department may give such effect to the conduct of a resident in another state as is provided by the laws of this state had such conduct occurred in this state.

(d) Whenever the department has suspended the license of a Georgia resident or refused to issue a driver's license to any person for conduct that occurred in another state, it shall review the suspension at least once every five years and shall reinstate the license if the department determines that the suspension is no longer warranted and the person would otherwise be eligible for a license. (Code 1933, § 68B-303, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1984, p. 614, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 730, § 1; Ga. L. 2010, p. 932, § 4/HB 396.)

Cross references. — Jurisdiction of state over persons temporarily traveling in state, § 50-2-21.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1994, “drug related” was substituted for “drug-related” in subsection (a).

JUDICIAL DECISIONS

Points are assessed for out-of-state violations which would be assessed points if committed within Georgia. Wil-

liams v. Cofer, 246 Ga. 344, 271 S.E.2d 486 (1980).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 374.

ALR. — Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 125 ALR 1459.

Validity, construction, and application of provision for revocation or suspension of driver's license because of conviction of traffic violation in another state, 87 ALR2d 1019.

40-5-53. When courts to send licenses and reports of convictions to department; destruction of license by department; issuance of new license upon satisfaction of certain requirements.

(a) Whenever any person is convicted of any offense for which this chapter makes mandatory the suspension of the license of such person by the department, the court in which such conviction is had shall require the surrender to it of any driver's license then held by the person so convicted and the court shall thereupon forward the same to the department, together with the uniform citation form authorized by Article 1 of Chapter 13 of this title, within ten days after the conviction. Notwithstanding any other provision of this title, the department shall destroy any suspended or revoked drivers' licenses, permits, or identification cards forwarded to it under this or any other provision of law. The department shall issue a new driver's license, permit, or identification card upon satisfaction of the applicable reinstatement requirement, including but not limited to the payment of the applicable reinstatement fee. No additional fee shall be required for the issuance of a replacement driver's license, permit, or identification card.

(b) Every court in each county of this state having jurisdiction over offenses committed under this chapter and Chapter 6 of this title or any other law of this state or ordinance adopted by a local authority regulating the operation of motor vehicles on highways shall forward to the department, within ten days after the conviction of any person in such court for a violation of any such law other than regulations governing speeding in a noncommercial motor vehicle for which no points are assigned under Code Section 40-5-57, standing, or parking, a

uniform citation form authorized by Article 1 of Chapter 13 of this title. Notwithstanding any other provision of this title, in satisfaction of the reporting requirement of this subsection, the courts of this state shall transmit the information contained on the uniform citation form by electronic means, using the electronic reporting method approved by the department. Subject to appropriations by the General Assembly, the department shall pay to the clerk of the court forwarding the required report 40¢ for each report transmitted electronically in a timely manner as required in this subsection; and notwithstanding any general or local law to the contrary, the clerk shall pay such fees over to the general fund of the city or county operating the court. (Ga. L. 1937, p. 322, art. 4, § 13; Ga. L. 1939, p. 135, § 12; Ga. L. 1968, p. 430, § 6; Code 1933, § 68B-304, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1986, p. 1002, § 9; Ga. L. 1987, p. 392, § 1; Ga. L. 1990, p. 1913, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 1118, § 1; Ga. L. 1992, p. 2785, § 6; Ga. L. 1993, p. 1665, § 1; Ga. L. 1995, p. 917, § 2; Ga. L. 2000, p. 951, § 5-15; Ga. L. 2003, p. 580, § 1; Ga. L. 2004, p. 471, § 1; Ga. L. 2005, p. 334, § 17-12/HB 501; Ga. L. 2006, p. 449, § 5/HB 1253; Ga. L. 2010, p. 932, § 10/HB 396.)

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Basis of jurisdiction and authority to declare driver habitual offender. — Department's jurisdiction and authority to declare a driver a habitual offender does not depend on the court's compliance with ten-day notice requirements of O.C.G.A. § 40-5-53(b), but depends on the information contained within the department's files as provided by O.C.G.A. § 40-5-58(b). *Hardison v. Orndorff*, 173 Ga. App. 630, 327 S.E.2d 497 (1985).

Failure to transmit notice of conviction within ten days. — Failure of a court to transmit notice of a licensee's third DUI conviction to the Georgia Department of Driver Services (DDS) within 10 days of the conviction's entry as required by O.C.G.A. § 40-5-53(b) did not invalidate the revocation of licensee's driver's license; the statute was meant to facilitate record keeping and the DDS's duty to act on a license revocation was based not on when the court acted but on when the department's records disclosed facts sufficient to revoke the license.

Lokey v. Ga. Dep't of Driver Servs., 291 Ga. App. 856, 663 S.E.2d 283 (2008).

Under O.C.G.A. § 40-5-53(b), a court of conviction is required to transmit notification of applicable convictions to the Georgia Department of Driver Services within 10 days of the date of conviction, but a trial court's failure to timely transmit the records, which failure results in delayed revocation of an individual's license, does not affect the validity of the revocation or the calculation of the five-year period. *Eason v. Dozier*, 298 Ga. App. 65, 679 S.E.2d 89 (2009), cert. denied, No. S09C1605, 2009 Ga. LEXIS 794 (Ga. 2009).

Calculating time in prison into revocation period. — While the defendant's license may have been held by the Department of Corrections while the defendant was incarcerated, the defendant's five-year revocation period may not be reduced by that time because the defendant had not been declared a habitual violator by the Department of Driver Ser-

vices. *Eason v. Dozier*, 298 Ga. App. 65, 679 S.E.2d 89 (2009), cert. denied, No. S09C1605, 2009 Ga. LEXIS 794 (Ga. 2009).

Fee goes to city treasury. — Import of O.C.G.A. § 40-5-53 is that the court shall forward the report to the department through the department's agent, the

clerk, and that the court forwarding the report shall receive the fee from the department through the department's agent, the clerk. Hence, the fees properly must go into the city treasury. *Young v. Lockhart*, 255 Ga. 55, 334 S.E.2d 856 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Clerk of the court is not authorized to retain fees paid by the department. 1979 Op. Att'y Gen. No. U79-21.

Administrative handling of reports of pleas. — Upon receipt of report of conviction, i.e., finding of guilt or entry of plea of guilty, or plea of nolo contendere, the Department of Public Safety should administratively handle the report as the department would any other report of conviction notwithstanding the fact that the defendant was able to lessen any harsh criminal consequences of defendant's actions by availing oneself of first-offender treatment. 1982 Op. Att'y Gen. No. 82-64.

Once the Department of Public Safety is

in receipt of a report of "an accepted plea of nolo contendere" it should administratively handle the nolo contendere plea as provided for in O.C.G.A. Ch. 5, T. 40 without regard to whether a fine was or was not imposed by the trial court. 1982 Op. Att'y Gen. No. 82-64.

Electronic transfer of records of convictions. — Because a citation serves as the formal accusation against a convicted driver, local jurisdictions may transmit traffic ticket information electronically to the Department of Public Safety but not as a substitute for sending the citation copy. The uniform traffic citation must also be forwarded to the department. 1991 Op. Att'y Gen. No. U91-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

40-5-54. Mandatory suspension of license; notice of suspension.

(a) The department shall forthwith suspend, as provided in Code Section 40-5-63, the license of any driver upon receiving a record of such driver's conviction of the following offenses, whether charged as a violation of state law or of a local ordinance adopted pursuant to Article 14 of Chapter 6 of this title:

- (1) Homicide by vehicle, as defined by Code Section 40-6-393;
- (2) Any felony in the commission of which a motor vehicle is used;
- (3) Hit and run or leaving the scene of an accident in violation of Code Section 40-6-270;
- (4) Racing on highways and streets;
- (5) Using a motor vehicle in fleeing or attempting to elude an officer;

(6) Fraudulent or fictitious use of or application for a license as provided in Code Section 40-5-120 or 40-5-125;

(7) Operating a motor vehicle with a revoked, canceled, or suspended registration in violation of Code Section 40-6-15; or

(8) Any felony violation of Article 1 of Chapter 9 of Title 16 if such offense related to an identification document as defined in Code Section 16-9-4.

(b) All judges of all courts having jurisdiction of the offenses set forth in subsection (a) of this Code section shall, at the time of sentencing, give notice to the defendant on forms prescribed by the department of the suspension of the defendant's driver's license. The period of suspension shall be determined by the department for the term authorized by law. The court shall forward the notice of suspension and the defendant's driver's license to the department within ten days from the date of conviction. The department shall notify the defendant of the period of suspension at the address provided by the defendant. (Ga. L. 1939, p. 135, § 10; Ga. L. 1943, p. 196, § 5; Ga. L. 1951, p. 565, § 7A; Ga. L. 1956, p. 543, § 15; Ga. L. 1957, p. 124, § 4; Ga. L. 1964, p. 225, § 3; Ga. L. 1968, p. 430, § 8; Ga. L. 1971, p. 249, § 1; Code 1933, § 68B-305, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1073, § 1; Ga. L. 1983, p. 1000, § 2; Ga. L. 1987, p. 1082, § 1; Ga. L. 1988, p. 897, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 1284, § 1; Ga. L. 1993, p. 940, § 1; Ga. L. 2000, p. 951, § 5-16; Ga. L. 2002, p. 1024, § 4; Ga. L. 2004, p. 749, § 7; Ga. L. 2011, p. 355, § 4/HB 269.)

Cross references. — Drag racing, § 40-6-186. Laying drags, § 40-6-251. Disposition of traffic offenses in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 13.

Editor's notes. — Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for

the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose."

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937, p. 322 are included in the annotations for this Code section.

Defendant's driver's license was properly suspended after the defendant pled guilty to and received sentences as a

first offender for two counts of homicide by vehicle in the first degree and one count of driving with ability impaired by alcohol. *Salomon v. Earp*, 190 Ga. App. 405, 379 S.E.2d 217 (1989), overruled on other grounds, *Pender v. Witcher*, 196 Ga. App. 856, 397 S.E.2d 193 (1990).

Conviction in a city court of driving

under the influence was sufficient to authorize revocation of the license of the driver to operate an automobile. *Watson v. Department of Pub. Safety*, 66 Ga. App. 633, 18 S.E.2d 789 (1942) (decided under Ga. L. 1937, p. 322).

Cited in *Cofer v. Cook*, 141 Ga. App. 646, 234 S.E.2d 185 (1977); *Howe v. Cofer*, 144 Ga. App. 589, 241 S.E.2d 472 (1978);

Cofer v. Crowell, 146 Ga. App. 639, 247 S.E.2d 152 (1978); *Hardison v. Popham*, 151 Ga. App. 143, 259 S.E.2d 149 (1979); *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980); *Miles v. Shaw*, 272 Ga. 475, 532 S.E.2d 373 (2000); *Dozier v. Jackson*, 282 Ga. App. 264, 638 S.E.2d 337 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 119, 143 et seq.

Am. Jur. Proof of Facts. — Identification of Hit-And-Run Vehicle and Driver, 60 POF3d 91.

ALR. — What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 79 ALR2d 866.

Regulations establishing a "Point System" as regards suspension or revocation of license of operator of motor vehicle, 5 ALR3d 690.

Necessity and sufficiency of showing in a criminal prosecution under a "hit-and-run" statute accused's knowledge of accident, injury, or damage, 23 ALR3d 497; 26 ALR5th 1.

Construction and application of "amnesty" provision whereby automobile driver leaving scene of accident may report to police within stated time without risk of use of his report against him, 36 ALR4th 907.

40-5-54.1. Denial or suspension of license for noncompliance with child support order.

(a) As used in this Code section, the term:

(1) "Agency" means the agency within the Department of Human Services which is responsible for enforcing orders for child support pursuant to this article.

(2) "Compliance with an order for child support" means, as set forth in a court order, administrative order, or contempt order for child support, the obligor is not more than 60 calendar days in arrears in making payments in full for current support, periodic payments on a support arrearage, or periodic payments on a reimbursement for public assistance.

(3) "Proof of compliance" means the notice of release issued by the agency or court of competent jurisdiction stating that the delinquent obligor is in compliance with an order for child support.

(b) The department shall suspend, as provided in Code Sections 19-6-28.1 and 19-11-9.3, the license of any driver upon receiving a record from the agency or a court of competent jurisdiction stating that such driver is not in compliance with an order for child support. The department shall send notice of any suspension imposed pursuant to

this Code section. Such notice shall be sent via certified mail to the address reflected on its records as the driver's mailing address. The mailing of such notice by the department shall be deemed conclusively to be notice to such driver of the suspension of his or her driver's license and shall be deemed to satisfy all notice requirements of law, and no further notice to the driver shall be required for the suspensions provided for in this Code section.

(c) The suspension or denial of an application for issuance or renewal of a license shall be for an indefinite period and until such person shall provide proof of compliance with an order for child support. Such person's license shall be reinstated if the person submits proof of compliance with an order for child support from the agency or court of competent jurisdiction and pays a restoration fee of \$35.00 or \$25.00 when such reinstatement is processed by mail for the return of his or her license.

(d) Any person who receives notice from the agency that his or her registration is subject to denial or suspension may request a hearing and appeal as provided for in Code Section 19-6-28.1 or 19-11-9.3. Notwithstanding any provisions of law to the contrary, the hearings and appeal procedures provided for in such Code sections shall be the only such procedures required for purposes of this Code section. (Code 1981, § 40-5-54.1, enacted by Ga. L. 1996, p. 453, § 11; Ga. L. 2000, p. 951, § 5-17; Ga. L. 2008, p. 171, § 4/HB 1111; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Cross references. — Denial or suspension of license of professional forester for noncompliance with child support order, § 12-6-49.1.

40-5-55. Implied consent to chemical tests.

(a) The State of Georgia considers that any person who drives or is in actual physical control of any moving vehicle in violation of any provision of Code Section 40-6-391 constitutes a direct and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a motor vehicle upon the highways or elsewhere throughout this state shall be deemed to have given consent, subject to Code Section 40-6-392, to a chemical test or tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug, if arrested for any offense arising out of acts alleged to have been committed in violation of Code Section 40-6-391 or if such person is involved in any traffic accident resulting in serious injuries or fatalities. The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe that the person has been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section

40-6-391. The test or tests shall be administered as soon as possible to any person who operates a motor vehicle upon the highways or elsewhere throughout this state who is involved in any traffic accident resulting in serious injuries or fatalities. Subject to Code Section 40-6-392, the requesting law enforcement officer shall designate which of the test or tests shall be administered, provided a blood test with drug screen may be administered to any person operating a motor vehicle involved in a traffic accident resulting in serious injuries or fatalities.

(b) Any person who is dead, unconscious, or otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this Code section, and the test or tests may be administered, subject to Code Section 40-6-392.

(c) As used in this Code section, the term “traffic accident resulting in serious injuries or fatalities” means any motor vehicle accident in which a person was killed or in which one or more persons suffered a fractured bone, severe burns, disfigurement, dismemberment, partial or total loss of sight or hearing, or loss of consciousness. (Ga. L. 1968, p. 448, § 2; Ga. L. 1974, p. 562, § 2; Ga. L. 1974, p. 633, § 3; Code 1933, § 68B-306, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 1000, § 3; Ga. L. 1985, p. 630, § 1; Ga. L. 1985, p. 758, § 2; Ga. L. 1987, p. 1489, § 1; Ga. L. 1989, p. 1698, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 2; Ga. L. 1992, p. 912, § 1; Ga. L. 1992, p. 2564, § 1; Ga. L. 1993, p. 940, § 2; Ga. L. 2001, p. 208, § 1-1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, subsection (g) was redesignated as present subsection (c) in light of the amendment to this section by Ga. L. 1992, p. 2564, § 1.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992). For note, “Rodriguez v. State: Addressing Georgia’s Implied Consent Requirements for Non-English-Speaking Drivers,” see 54 Mercer L. Rev. 1253 (2003).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

NOTICE

TESTING

SERIOUS INJURY

ADMISSIBILITY

General Consideration

Strict construction. — Former Code 1933, § 68B-306 was in derogation of the common law and must be strictly construed and followed. *Hardison v. Chastain*, 151 Ga. App. 678, 261 S.E.2d 425 (1979) (see O.C.G.A. § 40-5-55).

Construction with O.C.G.A. § 40-5-67.1. — O.C.G.A. § 40-5-55 is the springboard for a law enforcement officer's duties under O.C.G.A. § 40-5-67.1 to request chemical testing of a driver's bodily substances and to inform the driver of the implied consent warning; the two statutes are in *pari materia* since the statutes relate to the same subject matter. *Snyder v. State*, 283 Ga. 211, 657 S.E.2d 834 (2008).

Constitutionality. — Since, under the Constitution of Georgia, the state may constitutionally take a blood sample from a defendant without defendant's consent, O.C.G.A. §§ 40-5-55 and 40-6-392 grant, rather than deny, a right to a defendant by providing for refusal to take such a test. *Allen v. State*, 254 Ga. 433, 330 S.E.2d 588 (1985).

Choice provided to a DUI defendant under Georgia law — submitting to a blood-alcohol test or refusing to submit, with resultant sanctions — is not so painful, dangerous, or severe, or so violative of religious beliefs, that no choice actually exists, and does not amount to compulsion on behalf of the state or a violation of due process. *Allen v. State*, 254 Ga. 433, 330 S.E.2d 588 (1985).

Nothing in the implied consent law prohibits an officer from advising a driver of the driver's implied consent rights and requesting multiple chemical tests at one time, and such a request would not violate the Fourth Amendment as an unreasonable attempt to "shop" through the driver's bodily fluids in search of evidence. *McKeown v. State*, 187 Ga. App. 685, 371 S.E.2d 243 (1988).

Choice afforded a suspect under O.C.G.A. § 40-5-55 either to agree or refuse to take a test is not protected by the privilege against self-incrimination since there is a distinction between compelling an arrestee to perform some act such as a field sobriety test versus requiring the arrestee to submit to the collection of

evidence from the arrestee's person, such as providing a urine sample. *Kehinde v. State*, 236 Ga. App. 400, 512 S.E.2d 311 (1999).

Implied consent provision in O.C.G.A. § 40-5-55(a) is unconstitutional as violative of Ga. Const. 1983, Art. I, Sec. I, Para. XIII, and the Fourth and Fourteenth Amendments of the United States Constitution because it authorizes a search and seizure, chemical testing of a suspect's blood, without probable cause that the suspect had been driving while impaired since the suspect was involved in an accident involving serious injuries or fatalities. *Cooper v. State*, 277 Ga. 282, 587 S.E.2d 605 (2003).

Georgia Supreme Court has held that O.C.G.A. § 40-5-55(a) is unconstitutional to the extent it requires chemical testing of the driver of a vehicle involved in a traffic accident resulting in serious injuries or death as it violates the Fourth and Fourteenth Amendments of the United States Constitution because the statute authorizes a search and seizure without probable cause; thus, when testing is conducted based upon the seriousness of injuries in an accident, rather than upon probable cause that the person has violated O.C.G.A. § 40-6-391, the results are inadmissible. *Buchanan v. State*, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

Defendant's claim that the blood test results were improperly admitted on the basis that O.C.G.A. § 40-5-55 was unconstitutional lacked merit as the defendant failed to raise that issue until the motion for new trial, and the constitutionality issue was not properly before the trial court at that time because it was too late to raise that issue after guilty verdicts against the defendant had been returned. *Verlangieri v. State*, 273 Ga. App. 585, 615 S.E.2d 633 (2005).

Because a defendant was arrested for driving under the influence under O.C.G.A. § 40-6-391 based on probable cause and the state complied with the implied consent requirements of O.C.G.A. § 40-5-55, the defendant could not complain that drug and alcohol testing violated the search and seizure provisions of the Fourth Amendment or the Georgia Constitution because the implied consent

General Consideration (Cont'd)

statute allowed for the warrantless compelled testing of bodily fluids based on the existence of probable cause, but without proof of the existence of exigent circumstances. *Cornwell v. State*, 283 Ga. 247, 657 S.E.2d 195 (2008).

Section does not apply to alco-sensor test. — Argument that the results of an alco-sensor test were inadmissible because the defendant submitted to the test at the request of the defendant's wife, and not the officer's request, were meritless because O.C.G.A. §§ 40-5-55 and 40-6-392(a)(4) did not apply to the administration of the alco-sensor test. *Hernandez v. State*, 297 Ga. App. 177, 676 S.E.2d 795 (2009).

Advice of counsel at time of test. — Person was not entitled to advice of counsel when deciding whether to submit to test under former Code 1933, § 68B-306. *Department of Pub. Safety v. Maples*, 149 Ga. App. 484, 254 S.E.2d 724 (1979); *Hardison v. Chastain*, 151 Ga. App. 678, 261 S.E.2d 425 (1979) (see O.C.G.A. § 40-5-55).

Arrest required. — O.C.G.A. § 40-5-55(a), as the statute now stands, provides that consent is implied only if a person is arrested for a violation of O.C.G.A. § 40-6-391. *Buchanan v. State*, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

Arrest not required after defendant received serious injuries in accident. — After a defendant was involved in an accident which resulted in the defendant sustaining serious injuries, the investigating officer had probable cause to believe that the defendant was driving under the influence and, therefore, the officer was not required to arrest the defendant before reading the implied consent warning; however, if a different accident did not involve serious injuries, the suspect needed to be under arrest before the implied consent rights were read to that suspect. *Hough v. State*, 279 Ga. 711, 620 S.E.2d 380 (2005).

Balancing implied consent with constitutional rights. — Stated purpose of O.C.G.A. § 40-5-55 is to protect the citizens of this state from individuals driving under the influence because these

drivers constitute “a direct and immediate threat to the welfare and safety of the general public.” This extremely important purpose, in turn, must be balanced against the intrusion created by chemical testing on the individual's Fourth Amendment rights after the individual has been involved in a traffic accident involving serious injuries or fatalities and the investigating officer has probable cause to believe that the individual was driving under the influence. In considering this balance, it must further be remembered that the Fourth Amendment was designed to protect individuals only from unreasonable searches. In a scenario where the driver/defendant is seriously injured in an automobile accident, given the presence of probable cause, the requirement that a person submit to a chemical test is inherently reasonable in the balance, and the Fourth Amendment's “probable cause yardstick” measures up to be constitutionally sound. *Hough v. State*, 279 Ga. 711, 620 S.E.2d 380 (2005).

Grounds to invoke the implied consent procedure. — Police had reasonable grounds to invoke defendant's implied consent to chemical testing when defendant was arrested in connection with a driving related offense, driving with a revoked license, and the officer identified a strong odor of alcohol on defendant's person. *Duvall v. State*, 250 Ga. App. 87, 550 S.E.2d 479 (2001).

Before an unconscious person could have been deemed not to have withdrawn implied consent to blood alcohol testing, that implied consent must have first existed as provided by O.C.G.A. § 40-5-55(a); consent was implied only if a person was arrested for a violation of O.C.G.A. § 40-6-391, and since a defendant was not arrested for any such violation before the blood test was conducted, a trial court properly suppressed the results of the blood test. *State v. Bass*, 273 Ga. App. 540, 615 S.E.2d 589 (2005).

Suppression of the results of a state-administered breath test because an officer did not specifically state a defendant was being arrested for DUI was error. Acknowledged probable cause to arrest the defendant for DUI coupled with the defendant's actual arrest satisfied the

requirements of O.C.G.A. § 40-5-55 and provided the grounds for invoking the implied consent procedures including reading the defendant a standard implied consent rights form. *State v. Underwood*, 283 Ga. 498, 661 S.E.2d 529 (2008).

Arrest is not prerequisite to chemical testing. — Arrest for driving under the influence (DUI) was not a prerequisite for administration of a chemical test; when an officer had reasonable grounds to believe a traffic offense was committed while defendant was violating DUI laws, a chemical test was proper and admissible. *State v. Goolsby*, 262 Ga. App. 867, 586 S.E.2d 754 (2003).

Serious injury or fatality of driver not prerequisite to chemical testing. — O.C.G.A. § 40-5-55(a) does not require that the serious injury or fatality required to have resulted from a traffic accident must have been suffered by the driver whose bodily substances are sought for chemical testing. *Snyder v. State*, 283 Ga. 211, 657 S.E.2d 834 (2008).

Rights read by non-arresting officer. — Implied consent statute was not violated because an officer other than the arresting officer read the defendant's rights to the defendant. *Edge v. State*, 226 Ga. App. 559, 487 S.E.2d 117 (1997).

Non-English speaking driver. — Non-English-speaking driver is not in a condition rendering such person incapable of refusal for the purposes of O.C.G.A. § 40-5-55(b). *Lee v. State*, 324 Ga. App. 28, 749 S.E.2d 32 (2013).

Defendant's challenge to an implied consent jury instruction was rejected as the challenged language came from the statute, not from an appellate court opinion; the defendant's claim that the instruction contained an appellate court's interpretation had been rejected in two other binding cases. *Jones v. State*, 273 Ga. App. 192, 614 S.E.2d 820 (2005).

Effect of search warrant threat on consent. — Defendant's conviction was properly reversed because the police improperly threatened to obtain a search warrant to obtain blood and urine for testing through a catheter after the defendant invoked the right under the implied consent law to refuse the testing. *State v. Collier*, 279 Ga. 316, 612 S.E.2d 281 (2005).

Police do not have the authority to seek a search warrant to compel a defendant to submit blood and urine samples for drug testing after a defendant has invoked the defendant's right under the implied consent law to refuse the testing. *State v. Collier*, 279 Ga. 316, 612 S.E.2d 281 (2005).

Effect of time lapse between advisement and statement. — In a vehicular homicide prosecution, even if the seizure of defendant's blood sample, following an implied consent advisement, under O.C.G.A. § 40-5-55(a), was illegal, the defendant's statement made to another officer four hours later was admissible due to the amount of time between the advisement and the statement and the fact that two different officers were involved. *McGrath v. State*, 277 Ga. App. 825, 627 S.E.2d 866 (2006), cert. denied, 2007 U.S. LEXIS 2328 (U.S. 2007).

Error in admitting chemical test results harmless in light of other evidence. — While the appeals court agreed that the trial court erred in denying the defendant's motion to suppress the results of the chemical test of the defendant's blood, the error was harmless as other evidence presented by the state, specifically the defendant's admission to being intoxicated and the testimony of other witnesses describing their observations, proved the defendant's intoxication. *Harrelson v. State*, 287 Ga. App. 664, 653 S.E.2d 98 (2007).

Cited in *Cofer v. Schultz*, 146 Ga. App. 771, 247 S.E.2d 586 (1978); *Cofer v. Summerlin*, 147 Ga. App. 721, 250 S.E.2d 174 (1978); *Longino v. Cofer*, 148 Ga. App. 341, 251 S.E.2d 113 (1978); *Jackson v. State*, 152 Ga. App. 441, 263 S.E.2d 181 (1979); *Adams v. Hardison*, 153 Ga. App. 152, 264 S.E.2d 693 (1980); *Milner v. Department of Pub. Safety*, 153 Ga. App. 313, 265 S.E.2d 310 (1980); *Tolbert v. Hicks*, 158 Ga. App. 642, 281 S.E.2d 368 (1981); *Willis v. State*, 249 Ga. 261, 290 S.E.2d 87 (1982); *Harper v. State*, 164 Ga. App. 230, 296 S.E.2d 782 (1982); *Smith v. State*, 165 Ga. App. 333, 298 S.E.2d 587 (1982); *Epps v. State*, 169 Ga. App. 157, 312 S.E.2d 146 (1983); *Patton v. State*, 170 Ga. App. 807, 318 S.E.2d 231 (1984); *Hardison v. Sellers*, 171 Ga. App. 327, 319 S.E.2d 134 (1984);

General Consideration (Cont'd)

State v. Holton, 173 Ga. App. 241, 326 S.E.2d 235 (1984); McElroy v. State, 173 Ga. App. 685, 327 S.E.2d 805 (1985); Mitchell v. State, 174 Ga. App. 594, 330 S.E.2d 798 (1985); Thompson v. State, 175 Ga. App. 645, 334 S.E.2d 312 (1985); Mathews v. State, 176 Ga. App. 394, 336 S.E.2d 259 (1985); State v. Brown, 178 Ga. App. 307, 342 S.E.2d 779 (1986); State v. Greene, 178 Ga. App. 875, 344 S.E.2d 771 (1986); State v. Hughes, 181 Ga. App. 464, 352 S.E.2d 643 (1987); Napier v. State, 184 Ga. App. 770, 362 S.E.2d 501 (1987); Odom v. State, 185 Ga. App. 496, 364 S.E.2d 626 (1988); Hunter v. State, 191 Ga. App. 769, 382 S.E.2d 679 (1989); Casas v. State, 193 Ga. App. 53, 387 S.E.2d 20 (1989); State v. Webb, 212 Ga. App. 872, 443 S.E.2d 630 (1994); Miles v. Ahearn, 243 Ga. App. 741, 534 S.E.2d 175 (2000); Fairbanks v. State, 244 Ga. App. 123, 534 S.E.2d 529 (2000); Rodriguez v. State, 275 Ga. 283, 565 S.E.2d 458 (2002); Gantt v. State, 263 Ga. App. 102, 587 S.E.2d 255 (2003); Davis v. State, 286 Ga. App. 443, 649 S.E.2d 568 (2007); State v. Stephens, 289 Ga. App. 167, 657 S.E.2d 18 (2008); State v. Preston, 293 Ga. App. 94, 666 S.E.2d 417 (2008); Daniel v. State, 298 Ga. App. 245, 679 S.E.2d 811 (2009); McClure v. Kemp, 285 Ga. 801, 684 S.E.2d 255 (2009).

Notice

No right to Miranda warnings before taking breath test. — Evidence of defendant's refusal to take a breath test did not need to be excluded simply because the officer did not advise the defendant of defendant's rights. Lankford v. State, 204 Ga. App. 405, 419 S.E.2d 498 (1992), cert. denied, 506 U.S. 1051, 113 S. Ct. 972, 122 L. Ed. 2d 127 (1993).

Choice afforded a suspect under O.C.G.A. §§ 40-5-55 and 40-6-392, either to agree or refuse to take a blood-alcohol test, is not protected by the privilege against self-incrimination and the form signed by the defendant, agreeing to take a breath test, was likewise unprotected, such that the court erred in suppressing the test based on the police officer's failure to inform defendant of defendant's

Miranda rights. State v. Mack, 207 Ga. App. 287, 427 S.E.2d 615 (1993).

No Miranda warnings were required before the defendant made a statement since the statement was made voluntarily, and was not made in response to police interrogation or while in police custody. Stevenson v. State, 264 Ga. 892, 453 S.E.2d 18 (1995).

Repetition of warnings not required. — Implied consent statute was properly implemented, since the defendant was given the implied consent warnings when the defendant was arrested for driving with a suspended license but was not again given the implied consent warnings after the defendant took a breath test and was placed under arrest for driving under the influence. Parsons v. State, 190 Ga. App. 803, 380 S.E.2d 87 (1989).

Police officer was not required to again allow the defendant to consider the defendant's options once the defendant knew the defendant had failed an administered breath test by returning to the defendant the form which the defendant had previously reviewed, initialled, and signed so as to indicate the defendant's desire for an additional test. State v. Hull, 210 Ga. App. 72, 435 S.E.2d 284 (1993).

In all cases in which police officers request a chemical test of a person's blood, urine, or other bodily substances in connection with the operation of a motor vehicle for the purpose of determining whether the driver was under the influence of alcohol or drugs, the officers must give the notice required by the implied consent statute. State v. Morgan, 289 Ga. App. 706, 658 S.E.2d 237 (2008), cert. denied, 2008 Ga. LEXIS 504 (Ga. 2008).

Notice was timely. — Two-hour delay before the defendant was advised of the defendant's implied consent rights was not untimely because the delay was caused by a newly hired officer's call for assistance to confirm that officer's determination that the defendant was driving under the influence. Edge v. State, 226 Ga. App. 559, 487 S.E.2d 117 (1997).

Trial court did not err in denying a defendant's motion to suppress evidence of the blood-alcohol results obtained after the defendant's vehicle was stopped and it

was determined that the defendant was driving under the influence; the defendant consented to such a test as a driver using a vehicle on the Georgia highways and delay in administering the implied consent warning was due to the defendant's drunken condition and difficult behavior. *Cain v. State*, 274 Ga. App. 533, 617 S.E.2d 567 (2005).

Notice was adequate. — Defendant's argument that the officer advised the defendant that the defendant was under arrest for driving under the influence and not for a violation of O.C.G.A. § 40-6-391(a)(6) and that the defendant never consented to the testing of the defendant's blood for the presence of drugs failed; nothing in O.C.G.A. § 40-5-55 or O.C.G.A. § 40-6-392 required the officer to tell the defendant that the defendant was under arrest for a drug offense in order for the implied consent to be valid. *Meiklejohn v. State*, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Defendant advised of options. — Any failure by the Department of Transportation in complying with the reporting requirements of O.C.G.A. § 40-5-51 pertaining to suspension or revocation of operating privileges of nonresident motorists did not diminish the fact that former subsection (c) of O.C.G.A. § 40-5-55, in effect at the time of the offense, evoked procedures at the time of defendant's arrest for immediate suspension of any person's driving privileges upon refusal to submit to the chemical test prescribed by O.C.G.A. § 40-5-55(a); consequently, since the trial transcript revealed that the deputy advised the defendant at the time of arrest of the defendant's options pursuant to Georgia's implied consent law, there was no basis for excluding evidence of the results of the state-administered breath test. *Anthony v. State*, 211 Ga. App. 622, 441 S.E.2d 70 (1993), overruled on other grounds, *State v. Coleman*, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Implied consent notice given before arrest. — Required timing of the implied consent notice for a person who is involved in a traffic incident resulting in serious injuries or a fatality, and who is not arrested at that time for a violation of O.C.G.A. § 40-6-391 is: (a) law enforce-

ment officers must administer chemical tests for alcohol and drugs as soon as possible; and (b) the implied consent notice must be given at the time such test is requested, which may or may not be at the time of actual testing. *Joiner v. State*, 239 Ga. App. 843, 522 S.E.2d 25 (1999).

Although a police officer who detected a strong order of alcohol coming from the defendant who was standing over a motorcycle that was involved in an accident informed the defendant of the defendant's rights under Georgia's implied consent statute before the officer arrested the defendant for driving under the influence of alcohol, the appellate court found that the defendant was not free to leave at the time the implied consent warning was read to the defendant, and the appellate court held that the reading of the notice satisfied the requirements of O.C.G.A. §§ 40-5-55, 40-5-67.1(a), and 40-6-392(a)(4). *Oliver v. State*, 268 Ga. App. 290, 601 S.E.2d 774 (2004).

Notice can be given in close proximity before arrest. — O.C.G.A. § 40-5-67.1 implied consent notice given at the "time of arrest" under O.C.G.A. § 40-6-392 was timely when the notice preceded the formal arrest by a few seconds and the O.C.G.A. § 40-5-55(a) state-administered chemical testing, "Intoxilyzer 5000" testing, was done after the arrest. The "time of the arrest" included times as close in proximity to the instant of arrest as the circumstances of the individual case might warrant. *Kahl v. State*, 268 Ga. App. 879, 602 S.E.2d 888 (2004).

Warning read to two suspects at the same time. — Even though the arresting officer testified that the officer read implied consent warnings to the defendant and the driver of another vehicle at the same time, since the officer also testified that the officer "independently" advised both suspects of their options before subjecting the suspects to a breath test, the trial court did not err in failing to suppress the results of the test. *Hilliard v. State*, 216 Ga. App. 618, 455 S.E.2d 82 (1995).

Warning to commercial driver. — Notices advising the defendant that if the defendant refused testing the defendant

Notice (Cont'd)

would be disqualified from operating a commercial motor vehicle for a minimum of one year were adequate, even though the notices did not advise the defendant that refusal to submit to the tests could also disqualify the defendant from operating a private motor vehicle. *State v. Becker*, 240 Ga. App. 267, 523 S.E.2d 98 (1999).

Driver afforded sufficient due process. — Administrative decision disqualifying a driver from driving a commercial motor vehicle for life based on the refusal to submit to state-administered chemical testing and a prior conviction for driving under the influence was upheld as the arresting officer informed the driver that the driver could lose that driver's license to drive upon refusing to submit to chemical testing, and the requirements of due process did not require the arresting officer to inform the driver of all the consequences of refusing to submit to chemical testing. Moreover, the driver requested and received a hearing under O.C.G.A. § 40-5-67.1(g)(1). *Chancellor v. Dozier*, 283 Ga. 259, 658 S.E.2d 592 (2008).

Parent's consent to minor's blood test not necessary. — Fact that the driver was a minor at the time the driver's blood was taken did not require that the driver's parents, after having been informed of the driver's rights under the implied consent law, consent to the taking of the driver's blood. *Long v. State*, 176 Ga. App. 89, 335 S.E.2d 587 (1985).

Improper notice required suppression of blood test results. — Trial court erroneously applied the amendment of O.C.G.A. § 40-5-67.1(d) retroactively to the defendant's criminal matter, wherein the court denied suppression of a blood test result taken of the defendant as the investigating officer failed to provide the defendant with the requisite notice of the implied consent rights under O.C.G.A. § 40-5-55(a) prior to obtaining the defendant's consent; retroactive application of § 40-5-67.1(d) was improper because the amendment eliminated the defendant's substantive right to refuse to submit to testing. *Williams v. State*, 297 Ga. App. 626, 677 S.E.2d 773 (2009).

Notice given one hour after arrest rendered results inadmissible. —

Counsel was ineffective for failing to file a motion to suppress defendant's blood sample, which had tested positive for methamphetamine, because the defendant was not read the defendant's implied consent rights until nearly an hour after the defendant was arrested for leaving the scene of an accident, instead of at the time of defendant's arrest as required by O.C.G.A. §§ 40-5-55 and 40-6-391(a)(4). *Thrasher v. State*, 300 Ga. App. 154, 684 S.E.2d 318 (2009).

Arresting officer not required to ensure driver understands notice. — As to the defendant's conviction for driving under the influence, the trial court did not misapply O.C.G.A. § 40-5-55(b) when the court denied the defendant's motion in limine to preclude the results of the breath test because it was presumed that the court followed the line of cases holding that an arresting officer is not required to ensure that the driver understands the implied consent notice. *Lee v. State*, 324 Ga. App. 28, 749 S.E.2d 32 (2013).

Testing

Authority of officer to designate type of chemical test. — O.C.G.A. 40-5-67.1, read in pari materia with O.C.G.A. §§ 40-5-55 and 40-6-392, authorizes a law enforcement officer to designate the appropriate chemical test to be administered — breath, blood, urine, or other bodily substance — for the detection of the source of impairment as suspected by the officer. *Jordan v. State*, 223 Ga. App. 176, 477 S.E.2d 583 (1996).

Right to an alternative test. — Defendant's failure to complete a breath test without justification negated defendant's right to an alternative test. *Allen v. State*, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

Test or tests. — As long as a defendant's right to an independent chemical test was clear, an officer may have obtained consent for more than one chemical test and then elected which consented-to "test or tests" were to have been administered; an order suppressing defendant's breath test results was reversed. *State v. Brantley*, 263 Ga. App. 209, 587 S.E.2d 383 (2003).

Blood or breath testing not prerequisite to requirement for urine sample. — O.C.G.A. § 40-5-67.1, construed with O.C.G.A. §§ 40-5-55 and 40-6-392, does not require blood or breath testing before an officer may require a suspect to provide a urine sample for analysis for the presence of alcohol, drugs, or marijuana. *State v. Sumlin*, 224 Ga. App. 205, 480 S.E.2d 260 (1997).

Retest allowed. — When, due to inadvertence, a breathalyzer test of a defendant's breath cannot be completed and a retest is possible without inconveniencing the defendant and without delay, such a retest is not a violation of the defendant's rights and is not a basis for suppression of the results of the test. *Montgomery v. State*, 174 Ga. App. 95, 329 S.E.2d 166 (1985); *Shadix v. State*, 179 Ga. App. 644, 347 S.E.2d 298 (1986).

Independent blood test. — Trial court did not err in excluding defendant's testimony regarding an independent blood test made more than eight hours after the arrest. *Allen v. State*, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

Chemical test despite absence of probable cause. — Chemical test may be requested under the implied consent statute even though the arresting officer lacks probable cause to arrest for substance-influenced driving if the officer has at least reasonable grounds to believe that a violation of O.C.G.A. § 40-5-55 has occurred. *Davis v. State*, 187 Ga. App. 517, 370 S.E.2d 779 (1988).

Results of a urine test were admissible in a prosecution for driving under the influence of methamphetamine since the officer had reasonable grounds to arrest the defendant based on the fact that the defendant's eyes were dilated and the defendant's inability to give the officer any explanation as to how or why the defendant drove the defendant's vehicle into the rear of a truck. *Martin v. State*, 214 Ga. App. 614, 448 S.E.2d 471 (1994).

Probable cause was required before chemical testing may be administered on a driver involved in an accident involving serious injuries because the provision of O.C.G.A. § 40-5-55 allowing such tests after accidents involving serious injury is unconstitutional to the extent that the

law requires chemical testing regardless of any determination of probable cause. Evidence of a chemical test taken in this situation without probable cause was subject to suppression. *Ferguson v. State*, 277 Ga. 530, 590 S.E.2d 728 (2003).

Deoxyribonucleic acid (DNA) testing not authorized. — Blood sample taken pursuant to the implied consent law could not be subject to deoxyribonucleic acid (DNA) testing. *State v. Gerace*, 210 Ga. App. 874, 437 S.E.2d 862 (1993).

Drug testing was not part of consent. — Defendant's consent to testing in response to the implied consent warning was given with the understanding that it was to determine if the defendant was under the influence for purposes of violations of O.C.G.A. § 40-6-391 and the test results could not be used to support a charge of possession of marijuana. *State v. Lewis*, 233 Ga. App. 390, 504 S.E.2d 242 (1998).

Trial court erred in suppressing the defendant's refusal to submit to a state-administered chemical breath test as the implied consent notice given by a sheriff's deputy was substantially accurate and timely given, and irrespective of whether the refusal resulted from the defendant's confusion, it nevertheless remained a refusal; moreover, the defendant's choice to construe the law allowing for an option of designating the type of state-administered test was of no moment. *State v. Brookbank*, 283 Ga. App. 814, 642 S.E.2d 885 (2007).

Conduct constituted refusal. — When a defendant went to a breathalyzer machine but plugged the hole with the defendant's tongue and declined to blow into the tube, the defendant's conduct could be viewed as a refusal to take the test; there was no evidence that the defendant suffered from a physical or medical condition that would prevent the defendant from providing an adequate breath sample. *State v. Stewart*, 286 Ga. App. 542, 649 S.E.2d 525 (2007), cert. denied, 2008 Ga. LEXIS 120 (Ga. 2008).

Testing positive for drugs but negative for alcohol. — Defendant was not entitled to suppression of the blood test in which the defendant tested positive for cocaine rather than alcohol after the de-

Testing (Cont'd)

defendant consented to the test after implied consent warnings were read to the defendant; nothing in O.C.G.A. § 40-5-55 excluded testing for drugs and alcohol as the defendant was notified that the test was for drugs and alcohol. *Meiklejohn v. State*, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Trial court did not err in denying defendant's motion to exclude state-administered test results. — Trial court properly denied the defendant's motion in limine to exclude evidence that the defendant refused chemical testing based on the testimony of a deputy that while in the defendant's hospital room, a ticket was written for drunk driving and the defendant was advised of the custodial arrest; thus, there was no error in the trial court's determination that a reasonable person in defendant's position would not think that they were free to leave at the time the deputy read the implied consent warnings. *Plemmons v. State*, 755 S.E.2d 205, 2014 Ga. App. LEXIS 69 (2014).

Serious Injury

Accident involving serious injury. — Officers' observation that there was a lot of blood at the accident scene and that injuries included disfigurement of the passenger's leg and swelling of the driver's ankle constituted sufficient evidence of "serious" injury so as to invoke the driver's implied consent to a blood-alcohol test. *Lewis v. State*, 215 Ga. App. 796, 452 S.E.2d 228 (1994).

Because the traffic accident in which the defendant was involved resulted in a serious injury, the defendant was deemed by operation of law, pursuant to O.C.G.A. § 40-5-55, to have given consent to a chemical test of the defendant's bodily substances for the presence of alcohol or any other drug. *Stevenson v. State*, 264 Ga. 892, 453 S.E.2d 18 (1995).

Absent an arrest, a person involved in an accident resulting in serious injuries or fatalities must be informed of the person's implied consent rights within a reasonable amount of time after the accident as determined by the circumstances, and, when possible, before the administration

of any state tests. *Seith v. State*, 225 Ga. App. 684, 484 S.E.2d 690 (1997).

In a vehicular homicide prosecution, when the defendant was given an implied consent advisement, under O.C.G.A. § 40-5-55(a), and a sample of blood was seized, the blood sample was admissible because the defendant was not required to submit to testing merely because of involvement in a traffic accident involving serious injuries but because an investigating law enforcement officer had probable cause to believe that the defendant had been driving under the influence. *McGrath v. State*, 277 Ga. App. 825, 627 S.E.2d 866 (2006), cert. denied, 2007 U.S. LEXIS 2328 (U.S. 2007).

Trial court erred in granting the defendant's motion to suppress results from a blood test performed prior to any arrest as: (1) the evidence showed that the defendant was involved in a car wreck resulting in serious injury before blood was drawn; and (2) a sheriff's deputy had probable cause to suspect that the defendant had been driving under the influence of alcohol; moreover, contrary to the defendant's assertion, the fact that a loss of consciousness was temporary did not cause the blood test to fall outside the ambit of O.C.G.A. § 40-5-55(c). *State v. Umbach*, 284 Ga. App. 240, 643 S.E.2d 758 (2007).

As a defendant who sustained a fractured jaw when the defendant's van hit a utility pole was "involved in a traffic accident resulting in serious injury" within the meaning of O.C.G.A. § 40-5-55(c), and the responding officer, who smelled the odor of alcohol on the defendant, had probable cause to believe the defendant was driving under the influence of alcohol, the defendant was properly required to submit to a blood test at the hospital without being arrested. *Fowler v. State*, 294 Ga. App. 864, 670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

Following a one-car accident resulting in a fatality and other serious injuries, because a witness who observed the defendant just prior to the accident indicated that the defendant smelled of alcohol, the helicopter crew who transported the defendant also noticed the smell of alcohol, and the accompanying officer observed

that the defendant smelled of alcohol and had glassy eyes and slurred speech, the officer had a sufficient basis to obtain a blood sample from the defendant for testing pursuant to O.C.G.A. § 40-5-55(a). *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Suppression of evidence. — Accident in which the defendant was involved was not severe enough to trigger the implied consent statute, and, thus, the trial court erred in not suppressing defendant's blood test results. *Pilkenton v. State*, 254 Ga. App. 127, 561 S.E.2d 462 (2002).

Trial court did not err in denying the defendant's motion to suppress evidence seized by a state trooper who was lawfully investigating a serious injury accident the defendant was involved in as evidence the trooper found, specifically, some steel wool and prescription drugs, when coupled with other information the trooper possessed concerning the nature and cause of the crash, provided sufficient probable cause for the trooper to believe that the defendant was driving under the influence; further, the appeals court agreed that the evidence would have been inevitably discovered. *Cunningham v. State*, 284 Ga. App. 739, 644 S.E.2d 878 (2007).

No notice where driver was "out of it." — Officer's reliance on a nurse's statement that an injured driver was "out of it" was reasonable after the officer had observed medical personnel working around the driver, combined with the officer's first impression that the driver was dead, thus authorizing the officer's failure to obtain consent for a chemical analysis of bodily fluids, and the officer's to advise of implied consent rights as required by O.C.G.A. § 40-6-392. *Hill v. State*, 208 Ga. App. 714, 431 S.E.2d 471 (1993).

Dislocated shoulder was not a serious injury as defined by O.C.G.A. § 40-5-55(c) so as to invoke implied consent to blood and urine tests. *Miller v. State*, 219 Ga. App. 498, 466 S.E.2d 67 (1995).

Law enforcement must be aware of serious injury or fatality. — O.C.G.A. § 40-5-67.1(a) provides the temporal connection not expressly set forth in O.C.G.A. § 40-5-55(a); thus, the officer's request for testing is legally viable under the second

contingency of O.C.G.A. § 40-5-55(a), the driver's involvement in a traffic accident resulting in serious injuries or fatalities, only if at the time of the request the driver has been involved in a traffic accident that has resulted in serious injuries or fatalities of which law enforcement is aware. *Snyder v. State*, 283 Ga. 211, 657 S.E.2d 834 (2008).

Accident involving fatality. — In a case involving a fatality, an arrest prior to testing was not required to activate a driver's implied consent. *Brown v. State*, 218 Ga. App. 469, 462 S.E.2d 420 (1995).

Admissibility

Admission of refusal to submit to blood-alcohol test. — Admission of a refusal to submit to blood-alcohol chemical test does not violate the constitutional right against self-incrimination. *Wessels v. State*, 169 Ga. App. 246, 312 S.E.2d 361 (1983).

Court properly allowed into evidence the defendant's refusal to take the state-administered breath test, even though the defendant contended that the defendant was injured and shaken by the accident and was, therefore, incapable of refusing. *Hassell v. State*, 212 Ga. App. 432, 442 S.E.2d 261 (1994).

Person is required to submit to a test to determine if the person is under the influence of alcohol or other drugs; however, a driver has the right to refuse to take a state administered test subject to the mandate that exercise of the right of refusal shall be admissible in the driver's criminal trial. *State v. Leviner*, 213 Ga. App. 99, 443 S.E.2d 688 (1994).

When an officer read a defendant an implied consent notice under O.C.G.A. § 40-5-67.1(b) accurately and timely, the notice was valid irrespective of the defendant's claimed inability to understand the notice; thus, even if the defendant's later refusal to provide a breath sample resulted from a failure to comprehend the consequences of the defendant's conduct, the refusal was admissible against the defendant. *State v. Stewart*, 286 Ga. App. 542, 649 S.E.2d 525 (2007), cert. denied, 2008 Ga. LEXIS 120 (Ga. 2008).

Testimony as to officer's precise wording not required. — Trial court did

Admissibility (Cont'd)

not err in admitting into evidence the results of an intoximeter test performed on defendant when the arresting officer could not recall the precise wording in which the officer gave defendant the implied consent warnings. *Cheevers v. Clark*, 214 Ga. App. 866, 449 S.E.2d 528 (1994).

Consent obtained by misleading information. — When nonresident defendant's consent to a chemical breath test was based at least in part on an officer's statement that defendant's refusal to take the test would result in a six-month suspension of defendant's out-of-state driver's license, a penalty which the state was unauthorized to carry out, the defendant was deprived of making an informal choice under the implied consent law, and the test results were inadmissible. *Deckard v. State*, 210 Ga. App. 421, 436 S.E.2d 536 (1993).

In a prosecution for driving under the influence, since the defendant was deprived by the totality of the inaccurate, misleading, and/or inapplicable information given to the defendant by the arresting officer of making an informed choice under the implied consent statute, the defendant's refusal to consent to a urine test was rendered inadmissible. *State v. Leviner*, 213 Ga. App. 99, 443 S.E.2d 688 (1994).

Police officer's warning to nonresident defendant that "Under O.C.G.A. §§ 40-5-153 and 40-5-55, you will lose your privilege to operate a motor vehicle from six to twelve months should you refuse to submit to the designated State administered chemical test" omitted the crucial fact that refusal to take the test would affect defendant's ability to drive "on the highways of this state." Thus, the defendant was deprived of making an informed choice, and the test results were inadmissible overruling, *Anthony v. State*, 211 Ga. App. 622, 441 S.E.2d 70 (1993) and *State v. Reich*, 210 Ga. App. 407, 436 S.E.2d 703 (1993). *State v. Coleman*, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Substantial evidence supported the trial court's decision to grant the defendant's motion to suppress evidence that

was derived as a result of defendant's submission to a breath test during a traffic stop since the defendant's consent to take the test was based, at least in part, on misleading information from the police officer that defendant's out-of-state license could be suspended if the defendant refused to submit to the test; the officer had no authority to implement such a penalty for refusal. *State v. Peirce*, 257 Ga. App. 623, 571 S.E.2d 826 (2002).

Trial court properly suppressed the alco-sensor tests taken by the defendant because the officer incorrectly informed the defendant that the defendant did not have the right to refuse the test; O.C.G.A. § 40-5-55 gave the defendant the right to withdraw implied consent as pursuant to Ga. Const. 1983, Art. I, Sec. I, Para. XIII, a reasonable person in the defendant's position would have thought the defendant, who was ordered to turn around and place the defendant's hands behind the defendant's back after refusing the test, was being placed under arrest. *State v. Norris*, 281 Ga. App. 193, 635 S.E.2d 810 (2006).

No right to advice of counsel before deciding whether to submit to testing. — Motion filed by a defendant to exclude the results of a breath test under the Georgia Implied Consent Law in the defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391 was properly denied because the defendant was not entitled to the advice of counsel before deciding whether to submit to the test; the right to counsel under U.S. Const., amend. 6 and Ga. Const. 1983, Art. I, Sec. I, Para. XIV did not come into play until the proceedings had reached a critical stage, and the breath test was not such a stage because it did not signal the beginning of a formal adversary hearing and because a lawyer could add little to the warnings required from the officer administering the test by O.C.G.A. § 40-6-392(a)(4). *Rackoff v. State*, 281 Ga. 306, 637 S.E.2d 706 (2006).

Test results admissible following implied consent warning. — Implied consent warning properly advised the driver of the purposes for which the driver's blood was to be tested, and the test results were thus admissible in a prosecu-

tion for driving with the presence of marijuana in the driver's blood. *Radcliffe v. State*, 234 Ga. App. 576, 507 S.E.2d 759 (1998).

Because police had probable cause to believe that a defendant was impaired, in violation of O.C.G.A. § 40-6-391, when the defendant caused a vehicle accident that resulted in serious injury of one vehicle occupant and the death of another occupant, based on the defendant's appearance and statements made to medical personnel, the trial court found that the implied consent notice was properly administered and suppression of the state-administered chemical tests was denied; although the defendant was not under arrest at the time the implied consent notice was read, given the serious injuries resulting from the accident and the fact that there was probable cause to believe the defendant was driving while impaired, the defendant's consent to testing was implied pursuant to O.C.G.A. § 40-5-55. *Ellis v. State*, 275 Ga. App. 881, 622 S.E.2d 89 (2005).

Under Ga. Const. 1983, Art. I, Sec. I, Para. XIII, the defendant could not suppress the evidence of the blood test taken while the defendant was under suspicion for driving under the influence under O.C.G.A. § 40-6-391; because the state complied with the statutory implied consent requirements, the defendant was deemed under the implied consent provisions of O.C.G.A. § 40-5-55 to have given the defendant's consent to a test of the defendant's blood. *Meiklejohn v. State*, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Chemical test results properly suppressed. — Trial court properly granted the defendant's motion to suppress the results of a chemical test of blood based on the undue delay between the arrest, after a traffic stop, and the reading of the implied consent warnings as: (1) the state trooper was presented with numerous opportunities to issue the warnings to the defendant, but did not; and (2) the trial court rejected the trooper's rationale for not reading the defendant the implied consent warnings at any other earlier opportunity, implicitly determining that the trooper's testimony was not credible. *State v. Austell*, 285 Ga. App. 18, 645 S.E.2d 550 (2007).

Request for testing made before fatality resulted. — Because at the time an officer requested chemical testing under O.C.G.A. § 40-5-55, the defendant had not been arrested and there was no evidence that a serious injury or fatality had resulted from a collision in which the defendant was involved, request for chemical testing was invalid, although the defendant's passenger died 10 days after the request. *Snyder v. State*, 283 Ga. 211, 657 S.E.2d 834 (2008).

Probable cause. — Officers had probable cause to request a blood test under the implied consent statute, as the defendant exhibited several signs of impairment, was wholly unaware of the collision the defendant had caused, had slept in the vehicle for a while after leaving the party where alcohol had been served, and, most importantly, possessed drugs. *State v. Hughes*, 325 Ga. App. 429, 750 S.E.2d 789 (2013).

Probable cause and valid consent. — Order denying suppression of chemical test results admitted against a defendant was proper under the implied consent statute, O.C.G.A. § 40-5-55, given evidence that a formal arrest of the defendant prior to reading the implied consent rights was not warranted, and the defendant was being administered medical care. *Hannah v. State*, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

Denial of a defendant's suppression motion was affirmed as a victim with a broken kneecap was seriously injured under O.C.G.A. § 40-5-55(c) and the officers had probable cause based on the defendant's statements, the defendant's glossy eyes, and the odor of alcohol on the defendant's person to believe that the defendant was driving under the influence of alcohol; the officer was not required to arrest the defendant before the implied consent reading. *Jenkins v. State*, 282 Ga. App. 106, 637 S.E.2d 818 (2006).

New rule on implied consent testing applied retroactively. — Defendant's conviction was not final when the rule against obtaining chemical test results under the implied consent statute without probable cause to arrest a defendant was announced; thus, the new rule applied retroactively to the defendant's

Admissibility (Cont'd)

case. *Costley v. State*, 271 Ga. App. 692, 610 S.E.2d 647 (2005).

Relevancy not demonstrated. — Pursuant to O.C.G.A. § 40-5-55(a), the victim submitted to chemical testing of blood and urine; without any factual basis upon which a jury could conclude the victim was a less safe driver at the time of the collision, the trial court did not err in finding that the defendant failed to demonstrate the relevance of the urinalysis to the issue of the proximate cause of the teenagers' deaths from the vehicle accident so as to permit the jury to hear otherwise inadmissible character evidence. *Crowe v. State*, 259 Ga. App. 780, 578 S.E.2d 134 (2003).

Test results inadmissible when no probable cause to arrest defendant for O.C.G.A. § 40-6-391 violation. —

Trial court erred in denying the defendant's motion to suppress the defendant's chemical test results that were obtained under the implied consent statute, O.C.G.A. § 40-5-55(a), since the defendant was not arrested after a fatal crash for any offense in violation of O.C.G.A. § 40-6-391 nor was there probable cause to arrest the defendant for any such violation. *Costley v. State*, 271 Ga. App. 692, 610 S.E.2d 647 (2005).

Trial court properly granted defendant's motion to suppress the results of a state-administered blood test showing that the defendant had marijuana in the defendant's system at the time of a fatal car accident as the testing was obtained by an officer without the officer giving the implied consent notice to the defendant. *State v. Morgan*, 289 Ga. App. 706, 658 S.E.2d 237 (2008), cert. denied, 2008 Ga. LEXIS 504 (Ga. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Subsection (a) inapplicable to locomotive engineers. — Provisions of the Georgia Implied Consent Act do not, by the terms of the Act, apply to locomotive engineers. Any attempt to construe the

Act so as to apply to locomotive engineers is barred by federal law, which preempts state law in this area. 1993 Op. Att'y Gen. No. U93-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 124 et seq.

ALR. — Mental incapacity as justifying refusal to submit to tests for driving while intoxicated, 76 ALR5th 597.

40-5-56. Suspension of license or driving privilege for failure to respond to citation; reinstatement of license.

(a) Notwithstanding any other provisions of this chapter or any other law to the contrary, the department shall suspend the driver's license or privilege to operate a motor vehicle in this state of any person who has failed to respond to a citation to appear before a court of competent jurisdiction in this state or in any other state for a traffic violation other than a parking violation. The department shall include language in the uniform traffic citation stating that failure to appear and respond to such citation shall result in the suspension of the violator's driver's license or nonresident driving privilege. The language reflected on a uniform traffic citation issued in this state shall be sufficient notice of said suspension to support a conviction for a violation of Code Section 40-5-121 if such person drives subsequent to the imposition of such a

suspension following his or her failure to appear. Notwithstanding the foregoing, the department shall send notice of any suspension imposed pursuant to this Code section. Such notice shall be sent via certified mail to the address reflected on its records as the person's mailing address. Proof of receipt of said notice shall be admissible to support a conviction for a violation of Code Section 40-5-121 if such person drives subsequent to the imposition of such a suspension following his or her failure to appear.

(b) The suspension provided for in this Code section shall be for an indefinite period until such person shall respond and pay any fines and penalties imposed. Such person's license shall be reinstated if the person submits proof of payment of the fine from the court of jurisdiction and pays a restoration fee of \$100.00 or \$90.00 when such reinstatement is processed by mail to the department. Such suspension shall be in addition to any other suspension or revocation provided for in this chapter. (Code 1933, § 68B-316, enacted by Ga. L. 1978, p. 1452, § 1; Ga. L. 1979, p. 1049, § 2; Ga. L. 1983, p. 1000, § 4; Ga. L. 1984, p. 22, § 40; Ga. L. 1986, p. 184, § 1; Ga. L. 1988, p. 897, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 5-18; Ga. L. 2000, p. 1589, § 4; Ga. L. 2006, p. 449, § 6/HB 1253; Ga. L. 2008, p. 171, § 5/HB 1111; Ga. L. 2009, p. 679, § 3/HB 160; Ga. L. 2010, p. 932, § 12/HB 396.)

JUDICIAL DECISIONS

Driving on erroneously suspended license. — If the person is driving despite notification that the person's license has been suspended, the person is flaunting the law even if the reasons underlying the person's suspension were erroneously forwarded to the department. *Smith v. State*, 187 Ga. App. 322, 370 S.E.2d 185 (1988).

Collateral attack not permissible. — When there is no evidence that the defendant requested a hearing on the suspension of the defendant's license after

receipt of the notices of proposed suspension, the defendant waived the right to a hearing to contest the suspension, and the reasons for the suspension set forth on notices of suspension admitted in evidence made the suspension valid on the suspension's face so that an attack on the validity of the suspension was collateral and was not permissible. *Smith v. State*, 187 Ga. App. 322, 370 S.E.2d 185 (1988).

Cited in *Agnew v. State*, 298 Ga. App. 290, 680 S.E.2d 141 (2009).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 418.

ALR. — Statute providing for judicial review of administrative order revoking or

suspending automobile driver's license as providing for trial de novo, 97 ALR2d 1379.

40-5-57. Suspension or revocation of license of habitually negligent or dangerous driver; point system.

(a) The State of Georgia considers dangerous and negligent drivers to be a direct and immediate threat to the welfare and safety of the general public, and it is in the best interests of the citizens of Georgia immediately to remove such drivers from the highways of this state. Therefore, the department is authorized to suspend the license of a driver without a preliminary hearing upon a showing by the records of the department or other sufficient evidence that the licensee is a habitually dangerous or negligent driver of a motor vehicle, such fact being established by the point system in subsection (b) of this Code section.

(b) For the purpose of identifying habitually dangerous or negligent drivers and habitual or frequent violators of traffic regulations governing the movement of vehicles, the department shall assess points, as provided in subsection (c) of this Code section, for convictions of violations of the provisions of Chapter 6 of this title, of violations of lawful ordinances adopted by local authorities regulating the operation of motor vehicles, and of offenses committed in other states which if committed in this state would be grounds for such assessment. Notice of each assessment of points may be given, but the absence of notice shall not affect any suspension made pursuant to this Code section. No points shall be assessed for violating a provision of state law or municipal ordinance regulating standing, parking, equipment, size, and weight. The department is required to suspend the license of a driver, without preliminary hearing, when his driving record identifies him as a habitually dangerous or negligent driver or as a habitual or frequent violator under this subsection.

(c)(1)(A) Except as provided in subparagraph (C) of this paragraph, the points to be assessed for each offense shall be as provided in the following schedule:

Aggressive driving	6 points
Reckless driving	4 points
Unlawful passing of a school bus	6 points
Improper passing on a hill or a curve	4 points
Exceeding the speed limit by more than 14 miles per hour but less than 19 miles per hour	2 points
Exceeding the speed limit by 19 miles per hour or more but less than 24 miles per hour	3 points
Exceeding the speed limit by 24 miles per hour or more but less than 34 miles per hour	4 points

Exceeding the speed limit by 34 miles per hour or more	6 points
Disobedience of any traffic-control device or traffic officer	3 points
Too fast for conditions	0 points
Possessing an open container of an alcoholic beverage while driving	2 points
Failure to adequately secure a load, except fresh farm produce, resulting in loss of such load onto the roadway which results in an accident	2 points
Violation of child safety restraint requirements, first offense	1 point
Violation of child safety restraint requirements, second or subsequent offense	2 points
Violation of usage of wireless telecommunications device requirements	1 point
Operating a vehicle while text messaging	1 point
All other moving traffic violations which are not speed limit violations	3 points

(B) The commissioner shall suspend the driver's license of any person who has accumulated a violation point count of 15 or more points in any consecutive 24 month period, as measured from the dates of previous arrests for which convictions were obtained to the date of the most current arrest for which a conviction is obtained. A second or subsequent plea of nolo contendere, within the preceding five years, as measured from the dates of previous arrests for which pleas of nolo contendere were accepted to the date of the most current arrest for which a plea of nolo contendere is accepted, to a charge of committing an offense listed in this subsection shall be considered a conviction for the purposes of this Code section. At the end of the period of suspension, the violation point count shall be reduced to zero points.

(C) A court may order a person to attend a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 for any violation for which points are assessed against a driver's license under this subsection or may accept the attendance by a person at a driver improvement clinic approved by the commissioner pursuant to Code Section 40-5-83 after the issuance of a citation for such offense and prior to such person's appearance before the court, in which event the court shall reduce the fine

assessed against such person by 20 percent, and no points shall be assessed by the department against such driver. The disposition and court order shall be reported to the department and shall be placed on the motor vehicle record with a zero point count. This plea may be accepted by the court once every five years as measured from date of arrest to date of arrest.

(2) Any points assessed against an individual for exceeding the speed limit shall be deducted from that individual's accumulated violation point count and the uniform traffic citation issued therefor shall be removed from the individual's record if:

(A) The points were assessed based on the use of a radar speed detection device by a county or municipality during a period of time when the commissioner has determined that such county or municipality was operating a radar speed detection device in violation of Chapter 14 of this title, relating to the use of radar speed detection devices; and

(B) The commissioner has suspended or revoked the radar speed detection device permit of such county or municipality pursuant to Code Section 40-14-11.

(d) Any person who has such points assessed against him as to require the suspension of his license pursuant to subsection (a) or (b) of this Code section shall have his license suspended as follows:

(1) Upon a first assessment of the requisite points, the period of suspension shall be one year, provided that at any time after completion of the requirements set forth in Code Section 40-5-84, such person may apply to the department for the return of his license;

(2) For a second assessment of the requisite points within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the most current arrest for which a conviction is obtained, the period of suspension shall be three years, provided that at any time after completion of the requirements set forth in Code Section 40-5-84, such person may apply to the department for the return of his license; and

(3) For a third assessment of requisite points within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the most current arrest for which a conviction is obtained, such person shall have his license suspended for a period of two years. Such person shall not be eligible for early return of his license or for a limited driving permit as provided in Code Section 40-5-64 during such two-year period.

(e) The periods of suspension provided for in this Code section shall begin on the date the license is surrendered to and received by the

department, from the date a license is surrendered to a court under any provision of this chapter, or on the date that the department processes the citation or conviction, whichever date shall first occur. If the license cannot be surrendered to the department, the period of suspension may begin on the date set forth in a sworn affidavit setting forth the date and reasons for such impossibility, if the department shall have sufficient evidence to believe that the date set forth in such affidavit is true; in the absence of such evidence, the date of receipt of such affidavit shall be controlling.

(f) In all cases in which the department may return a license to a driver prior to the termination of the full period of suspension, the department may require such tests of driving skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the driver's past driving record and performance, and the driver shall pay the fee provided for in Code Section 40-5-84 for the return of his or her license. (Ga. L. 1968, p. 430, §§ 1-5; Code 1933, § 68B-307, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 1235, § 1; Ga. L. 1978, p. 1655, § 1; Ga. L. 1980, p. 691, § 1; Ga. L. 1982, p. 1633, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1985, p. 758, § 3; Code 1981, § 40-5-57.1, enacted by Ga. L. 1985, p. 758, § 4; Ga. L. 1989, p. 555, § 1; Code 1981, § 40-5-57, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1587, § 1; Ga. L. 1992, p. 1967, § 1; Ga. L. 1992, p. 2755, § 1; Ga. L. 1992, p. 2785, § 7; Ga. L. 1995, p. 917, § 3; Ga. L. 1996, p. 469, § 1; Ga. L. 1999, p. 515, § 1; Ga. L. 2000, p. 951, § 5-19; Ga. L. 2001, p. 208, § 1-2; Ga. L. 2004, p. 471, § 2; Ga. L. 2006, p. 275, § 3-12/HB 1320; Ga. L. 2010, p. 1156, § 1/HB 23; Ga. L. 2010, p. 1158, § 2/SB 360; Ga. L. 2014, p. 710, § 1-8/SB 298.)

The 2014 amendment, effective July 1, 2014, in subparagraph (c)(1)(C), in the first sentence, substituted "defensive driving" for "driver improvement" and inserted "approved by the commissioner pursuant to Code Section 40-5-83" in two places.

Cross references. — Certain restrictions on suspension or revocation of drivers' licenses for speeding violations reported by counties and municipalities to Department of Driver Services, § 40-14-16.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, in subparagraph (c)(1)(C) "motor vehicle record" was substituted for "Motor Vehicle Record" and "court" was substituted for "Court".

Editor's notes. — Ga. L. 1996, p. 469, § 4, not codified by the General Assembly, provides: "This Act shall become effective

July 1, 1996, and shall apply with respect to offenses committed on or after that date. The provisions of this Act shall not apply to or affect offenses committed prior to that effective date."

Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006'."

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006 for purposes of adopting local ordinances to become effective on or after July 1, 2006.

Ga. L. 2010, p. 1156, § 4/HB 23, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to offenses committed on or after July 1, 2010.

Ga. L. 2010, p. 1158, § 1/SB 360, not

codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving.'"

Ga. L. 2010, p. 1158, § 6/SB 360, not codified by the General Assembly, provides that the amendment by that Act shall apply to offenses committed on or after July 1, 2010.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937, p. 322 are included in the annotations for this Code section.

Constitutionality of different treatment of habitual violators. — Because the equal protection clause of the Fourteenth Amendment does not deny a state the power to treat different classes of people in different ways, the General Assembly could have reasonably concluded that habitual violators are more dangerous than those who have had their licenses suspended or revoked. Thus, a defendant was not denied equal protection when the defendant was sentenced as a habitual violator under O.C.G.A. § 40-5-58(c) rather than being sentenced under O.C.G.A. § 40-5-121. *Gaines v. State*, 260 Ga. 267, 392 S.E.2d 524 (1990).

Bond conditions did not constitute criminal punishment for double jeopardy purposes. — Conducting a hearing to modify the bond conditions of a third-time DUI offender and placing limitations upon the offender's driving privileges, predicated upon the necessity to protect the welfare and safety of the citizens of Georgia from a recidivist offender, was not punishment, nor was the hearing prosecution, for the purposes of double jeopardy. *Strickland v. State*, 300 Ga. App. 898, 686 S.E.2d 486 (2009).

Notice of suspension. — Notice contemplated by O.C.G.A. § 40-5-60 applies to all suspensions provided for in O.C.G.A. Ch. 5, T. 40, and suspensions under O.C.G.A. § 40-5-57 fall within this class and are not excepted from the general rule. Moreover, O.C.G.A. § 40-5-57 does not allow notice of license suspension by

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a *nolo contendere* plea, see 13 Ga. L. Rev. 723 (1979). For article, "Motor Vehicles and Traffic," see 27 Ga. St. U.L. Rev. 155 (2011).

operation of law. Thus, without proof by the state of actual or legal notice to a defendant of the defendant's license suspension, a conviction under O.C.G.A. § 40-5-121 cannot be sustained. *State v. Fuller*, 289 Ga. App. 283, 656 S.E.2d 902 (2008).

Administrative and criminal prosecutions not double jeopardy. — Suspension of defendant's operator's license pursuant to administrative proceedings did not constitute former punishment foreclosing prosecution for driving under the influence in violation of double jeopardy provisions. *Jackson v. State*, 218 Ga. App. 677, 462 S.E.2d 802 (1995).

Conviction for driving under the influence upheld. — Conviction in a city court of driving under the influence was sufficient to authorize revocation of the license of the driver to operate an automobile. *Watson v. Department of Pub. Safety*, 66 Ga. App. 633, 18 S.E.2d 789 (1942) (decided under Ga. L. 1937, p. 322).

Out-of-state violations. — Points are assessed for out-of-state violations which would be assessed points if committed within Georgia. *Williams v. Cofer*, 246 Ga. 344, 271 S.E.2d 486 (1980).

Surrender of out of state license improper. — Even if a defendant's speeding conviction were affirmed, O.C.G.A. § 40-5-51(a) provided that no points were to be assessed for any violation committed by a non-resident; accordingly, even if the conviction had been proper, the trial court erred in ordering defendant to surrender the defendant's Texas driver's license. In *the Interest of R.G.*, 272 Ga. App. 276, 612 S.E.2d 94 (2005).

Effect of subsequent relieving statute. — Forfeiture is not imposed when

there is a subsequent relieving statute. *Williams v. Cofer*, 246 Ga. 344, 271 S.E.2d 486 (1980).

Date of conviction time for calculating points. — Since former Code 1933, § 68B-307 required the assessment of points for convictions, the date of conviction is the rational choice as the time for the calculation of the number of points to be assessed. *Cofer v. Gurley*, 146 Ga. App. 420, 246 S.E.2d 436 (1978), overruled on other grounds, *Williams v. Cofer*, 246 Ga. 344, 271 S.E.2d 486 (1980) (see O.C.G.A. § 40-5-57).

Reasonable period of time for sending notice of suspension. — Four months after the last adjudication of a violation was a patently reasonable period of time within which to issue a notice of suspension, and in the absence of an unreasonable delay, there is no deprivation of a constitutional right. *Williams v. Cofer*, 246 Ga. 344, 271 S.E.2d 486 (1980).

Classification of mandatory suspension of license. — Mandatory suspension of license imposed under violation point system cannot be classified as criminal punishment resulting from a criminal prosecution. It is accomplished administratively by a designated public officer,

and there is a complete absence of any judicial action and no attribute of a criminal case. *Cofer v. Gurley*, 146 Ga. App. 420, 246 S.E.2d 436 (1978), overruled on other grounds, *Williams v. Cofer*, 246 Ga. 344, 271 S.E.2d 486 (1980).

Period of revocation for third assessment of points. — O.C.G.A. § 40-5-57 not only clearly contemplates that a driver's license can be suspended at least three times during a five-year period, but establishes a longer period of revocation for the third assessment of the requisite points. *Bowman v. Parrot*, 200 Ga. App. 405, 408 S.E.2d 115, cert. denied, *Bowden v. State*, 202 Ga. App. 802, 415 S.E.2d 527 (1992).

Liberal construction of statute relieving against forfeiture. — Statute relieving against forfeiture (such as reduction of points for violations) must be construed liberally. *Williams v. Cofer*, 246 Ga. 344, 271 S.E.2d 486 (1980).

Cited in *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980); *Williams v. State*, 162 Ga. App. 415, 291 S.E.2d 732 (1982); *Goblet v. State*, 174 Ga. App. 675, 331 S.E.2d 56 (1985); *Hardison v. Booker*, 179 Ga. App. 693, 347 S.E.2d 681 (1986); *Cabral v. White*, 181 Ga. App. 816, 354 S.E.2d 162 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Applications for limited permits. — Driver whose license was suspended under former Code 1933, § 68B-307 more than once may apply for a limited permit with respect to each suspension occurring within a ten-year (now five-year) period, provided that no more than two limited permits, excluding renewals, may be is-

sued to one driver during this period. 1977 Op. Att'y Gen. No. 77-54 (see O.C.G.A. § 40-5-57).

Driver may not apply for limited permit when license was revoked under former Code 1933, § 68B-312. 1977 Op. Att'y Gen. No. 77-54 (see O.C.G.A. § 40-5-63).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 116 et seq., 143 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 353 et seq., 359.

ALR. — Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 108 ALR 1162; 125 ALR 1459.

What amounts to conviction or satisfies

requirement as to showing of conviction, within statute making conviction a ground for refusing to grant or for canceling license or special privilege, 113 ALR 1179.

Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 125 ALR 1459.

What amounts to conviction or judi-

cation of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 79 ALR2d 866.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 ALR2d 1064.

Conviction or acquittal in previous criminal case as bar to revocation or suspension of driver's license on same factual charges, 96 ALR2d 612.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo, 97 ALR2d 1367.

Regulations establishing a "Point System" as regards suspension or revocation of license of operator of motor vehicle, 5 ALR3d 690.

Denial, suspension, or cancellation of

driver's license because of physical disease or defect, 38 ALR3d 452.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 427.

Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 ALR4th 1112.

Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 ALR4th 367.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, 18 ALR5th 542.

40-5-57.1. Suspension of licenses of persons under age 21 for certain offenses; suspension of licenses of persons under age 18 for certain point accumulations; reinstatement of license following suspension.

(a) Notwithstanding any other provision of this chapter, the driver's license of any person under 21 years of age convicted of hit and run or leaving the scene of an accident in violation of Code Section 40-6-270, racing on highways or streets, using a motor vehicle in fleeing or attempting to elude an officer, reckless driving, any offense for which four or more points are assessable under subsection (c) of Code Section 40-5-57, purchasing an alcoholic beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23, or violation of paragraph (3) or (5) of subsection (a) of Code Section 3-3-23, or violation of Code Section 40-6-391 shall be suspended by the department as provided by this Code section; and the driver's license of any person under 18 years of age who has accumulated a violation point count of four or more points under Code Section 40-5-57 in any consecutive 12 month period shall be suspended by the department as provided by this Code section. A plea of nolo contendere shall be considered a conviction for purposes of this subsection. Notice of suspension shall be given by certified mail or statutory overnight delivery, return receipt requested; or, in lieu thereof, notice may be given by personal service upon such person. Such license shall be surrendered within ten days of notification of such suspension. Notice given by certified mail or statutory overnight delivery, return receipt requested, mailed to the person's last known address shall be prima-facie evidence that such person received the required notice.

(b) A person whose driver's license has been suspended under subsection (a) of this Code section shall:

(1) Subject to the requirements of subsection (c) of this Code section and except as otherwise provided by paragraph (2) of this subsection:

(A) Upon a first such suspension, be eligible to apply for license reinstatement and, subject to payment of required fees, have his or her driver's license reinstated after six months; and

(B) Upon a second or subsequent such suspension, be eligible to apply for license reinstatement and, subject to payment of required fees, have his or her driver's license reinstated after 12 months; or

(2)(A) Upon the first conviction of a violation of Code Section 40-6-391, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, have his or her license suspended for a period of six months unless the driver's blood alcohol concentration at the time of the offense was 0.08 grams or more or the person has previously been subject to a suspension pursuant to paragraph (1) of this subsection, in which case the period of suspension shall be for 12 months.

(B) Upon the second conviction of a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, have his or her license suspended for a period of 18 months.

(C) Upon the third conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, be considered a habitual violator, and such person's license shall be revoked as provided for in Code Section 40-5-58.

(b.1) In any case where a person's driver's license was administratively suspended as a result of a violation of Code Section 40-6-391 for which the person's driver's license has been suspended pursuant to this Code section, the administrative license suspension period and the license suspension period provided by this Code section may run concurrently, and any completed portion of such administrative license suspension period shall apply toward completion of the license suspension period provided by this Code section.

(c)(1) Any driver's license suspended under subsection (a) of this Code section for commission of any offense other than violation of Code Section 40-6-391 shall not become valid and shall remain

suspended until such person submits proof of completion of a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 and pays the applicable reinstatement fee. Any driver's license suspended under subsection (a) of this Code section for commission of a violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the applicable reinstatement fee.

(2) The reinstatement fee for a first such suspension shall be \$210.00 or \$200.00 if paid by mail. The reinstatement fee for a second or subsequent such suspension shall be \$310.00 or \$300.00 if paid by mail.

(d) A suspension provided for in this Code section shall be imposed based on the person's age on the date of the conviction giving rise to the suspension. (Code 1981, § 40-5-57.1, enacted by Ga. L. 1997, p. 760, § 15; Ga. L. 2000, p. 951, § 5-20; Ga. L. 2000, p. 1457, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 184, §§ 2-2, 3-2; Ga. L. 2001, p. 208, §§ 2-2, 3-2; Ga. L. 2002, p. 415, § 40; Ga. L. 2004, p. 471, § 3; Ga. L. 2005, p. 334, §§ 17-13, 17-14/HB 501; Ga. L. 2009, p. 679, § 4/HB 160; Ga. L. 2012, p. 72, § 3/SB 236; Ga. L. 2014, p. 710, § 1-9/SB 298.)

The 2012 amendment, effective January 1, 2013, in subsection (b), substituted the present provisions of paragraph (b)(2) for the former provisions, which read: "(A) If the driver's license was suspended upon conviction for violation of Code Section 40-6-391, be subject to the provisions of Code Section 40-5-63.

"(B) If such driver was convicted of driving under the influence of alcohol or of having an unlawful alcohol concentration and is otherwise subject to the provisions of paragraph (1) of subsection (a) of Code Section 40-5-63, then such person shall not be eligible for a limited driving permit under Code Section 40-5-64, and

"(i) If the driver's alcohol concentration at the time of the offense was less than 0.08 grams, he or she shall not be eligible for license reinstatement until the end of six months; or

"(ii) If the driver's alcohol concentration at the time of the offense was 0.08 grams or more, he or she shall not be eligible for license reinstatement until the end of 12 months."; substituted "a violation of Code Section 40-6-391" for "the offense" near the beginning of subsection (b.1); added the last sentence of para-

graph (c)(1); and twice substituted "suspension" for "conviction" in paragraph (c)(2).

The 2014 amendment, effective July 1, 2014, in paragraph (c)(1), substituted "course approved by the commissioner pursuant to Code Section 40-5-83" for "program approved by the department" in the first sentence and substituted "DUI Alcohol or Drug" for "DUI Drug or Alcohol" near the end of the second sentence.

Editor's notes. — Ga. L. 1990, p. 2048, § 4, repealed the former version of this Code section and redesignated its provisions as subsections (d), (e), and (f) of Code Section 40-5-57, effective January 1, 1991. The former version of this Code section was based on Ga. L. 1985, p. 758, § 4, and concerned periods of suspension; department's and commissioner's discretion in early return of license; and proof of insurance.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the

amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is

applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 205 (2001).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state “zero tolerance” laws relating to underage drinking and driving, 34 ALR6th 623.

40-5-57.2. Suspension based on violation of Code Section 40-6-255.

- (a) The driver’s license of any person convicted for a second or subsequent offense of violating Code Section 40-6-255 shall be suspended as provided in this Code section. The person shall submit the driver’s license to the court upon conviction and the court shall forward the driver’s license to the department.
- (b)(1) A first suspension of a driver’s license under this Code section shall be for a period of six months.
- (2) A second or subsequent suspension of a driver’s license under this Code section shall be for a period of one year.
- (c) After the suspension period and when the person pays a restoration fee of \$60.00 or, when processed by mail, \$50.00, the suspension shall terminate and the department shall return the person’s driver’s license to such person. (Code 1981, § 40-5-57.2, enacted by Ga. L. 1998, p. 1658, § 1.)

Cross references. — Acquisition of gasoline without payment, § 40-6-255.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, the spelling of “offense” in subsection (a) was corrected.

40-5-57.3. Penalty for multiple convictions of causing serious injury due of right of way violations.

- (a) The driver’s license of any person who is convicted for a second or subsequent offense of violating Code Section 40-6-77 within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be suspended for 30 days. The person shall submit his or her driver’s license to the court upon conviction and the court shall forward the driver’s license to the department.

(b) After the suspension period and the person pays a restoration fee of \$60.00 or, when processed by mail, \$50.00, the suspension shall terminate and the department shall return the person's driver's license to such person. (Code 1981, § 40-5-57.3, enacted by Ga. L. 2009, p. 65, § 2/SB 196.)

Administrative rules and regulations. — Penalties for violations of Uniform Rules of the Road, Official Compilation of the Rules and Regulations of the

State of Georgia, Department of Driver Services, Driver License Services, Rule 375-3-3-.01.

40-5-58. Habitual violators; probationary licenses.

(a) As used in this Code section, "habitual violator" means any person who has been arrested and convicted within the United States three or more times within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, of:

(1) Committing any offense covered under Code Section 40-5-54 or Code Sections 40-6-391 through 40-6-395 or violating a federal law or regulation or the law of any state or a valid municipal or county ordinance substantially conforming to any offense covered under Code Section 40-5-54 or Code Sections 40-6-391 through 40-6-395; or

(2) Singularly or in combination, any of the offenses described in paragraph (1) of this subsection.

(b) When the records of the department disclose that any person is a habitual violator as defined in subsection (a) of this Code section, the department shall forthwith notify such person that his or her driver's license has been revoked by operation of law and that it shall be unlawful for such habitual violator to operate a motor vehicle in this state unless otherwise provided in this Code section. Notice shall be given by certified mail or statutory overnight delivery, with return receipt requested; or, in lieu thereof, notice may be given by personal service upon such person.

(c)(1) Except as provided in paragraph (2) of this subsection or in subsection (e) of this Code section, it shall be unlawful for any person to operate any motor vehicle in this state after such person has received notice that his or her driver's license has been revoked as provided in subsection (b) of this Code section, if such person has not thereafter obtained a valid driver's license. Any person declared to be a habitual violator and whose driver's license has been revoked under this Code section and who is thereafter convicted of operating a motor vehicle before the department has issued such person a driver's license or before the expiration of five years from such revocation, whichever occurs first, shall be punished by a fine of not less than

\$750.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both. Any person declared to be a habitual violator and whose driver's license has been revoked and who is convicted of operating a motor vehicle after the expiration of five years from such revocation but before the department has issued such person a driver's license shall be guilty of a misdemeanor.

(2) Any person declared to be a habitual violator as a result of three or more convictions of violations of Code Section 40-6-391 within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, and who is thereafter convicted of operating a motor vehicle during such period of revocation, prior to the issuance of a probationary license under subsection (e) of this Code section or before the expiration of five years, shall be guilty of the felony of habitual impaired driving and shall be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(d) Notwithstanding any contrary provisions of Code Section 17-7-95 or 24-4-410, for the purposes of this Code section, any plea of nolo contendere entered and accepted after January 1, 1976, shall be considered a conviction.

(e)(1) Notwithstanding any contrary provisions of this Code section or any other Code section of this chapter, any person who has been declared a habitual violator and who has had his driver's license revoked under subsection (b) of this Code section for a period of five years and two years have expired since the date on which such person's license was surrendered or an affidavit was accepted as provided in subsection (e) of Code Section 40-5-61 may be issued a probationary driver's license for a period of time not to exceed three years upon compliance with the following conditions:

(A) Such person has not been convicted, or pleaded nolo contendere to a charge, of violating any provision of this chapter, Chapter 6 of this title, or any local ordinance relating to the movement of vehicles for a period of two years immediately preceding the application for a probationary driver's license;

(B) Such person has not been convicted, or pleaded nolo contendere to a charge, of a violation of any provision of this chapter or Chapter 6 of this title which resulted in the death or injury of any individual;

(C) Such person has successfully completed, prior to the issuance of the probationary driver's license, a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 or

a DUI Alcohol or Drug Use Risk Reduction Program as designated by the department;

(D) Such person has not been convicted, or pleaded nolo contendere to a charge, of violating any provision of Title 3, relating to alcoholic beverages, or of violating any provision of Chapter 13 of Title 16, relating to controlled substances;

(E) Such person shall submit a sworn affidavit that such person does not excessively use alcoholic beverages and does not illegally use controlled substances or marijuana. It shall be a misdemeanor to falsely swear on such affidavit and, upon conviction, the probationary license shall be revoked. No probationary license shall be issued during the remainder of the revocation period, and no driver's license shall be issued for the remainder of the original revocation period or for a period of two years from the date of conviction under this subparagraph;

(F) Such person submits proof of financial responsibility as provided in Chapter 9 of this title; and

(G) Refusal to issue a probationary driver's license would cause extreme hardship to the applicant. For the purposes of this subsection, the term "extreme hardship" means that the applicant cannot reasonably obtain other transportation, and, therefore, the applicant would be prohibited from:

(i) Going to his place of employment or performing the normal duties of his occupation;

(ii) Receiving scheduled medical care or obtaining prescription drugs;

(iii) Attending a college or school at which he is regularly enrolled as a student;

(iv) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner; or

(v) Attending under court order any driver education or improvement school or alcohol or drug treatment program or course approved by the court which entered the judgment of conviction resulting in revocation of his driver's license or by the commissioner.

(2) Application for a probationary driver's license shall be made upon such forms as the commissioner may prescribe. Such forms shall require such information as is necessary for the department to

determine the need for such license. All applications shall be signed by the applicant before a person authorized to administer oaths.

(3) Upon compliance with the above conditions and the payment of a fee of \$210.00 or \$200.00 when processed by mail, such person may be issued a probationary driver's license by the department. Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be issued a replacement for a lost or destroyed probationary driver's license issued to him or her.

(4) A probationary driver's license shall be endorsed with such conditions as the commissioner deems necessary to ensure that such license will be used by the licensee only to avoid the conditions of extreme hardship. Such conditions may include the following restrictions:

- (A) Specific places between which the licensee may be allowed to operate a motor vehicle;
- (B) Routes to be followed by the licensee;
- (C) Times of travel;
- (D) The specific vehicles which the licensee may operate; and
- (E) Such other restrictions as the department may require.

(5) A probationary driver's license issued pursuant to this Code section shall become invalid upon the expiration of the period of the suspension or revocation of the driver's license of such person.

(6)(A)(i) Any probationary licensee violating the provisions of paragraph (4) of this subsection or operating a vehicle in violation of any conditions specified in this subsection shall be guilty of a misdemeanor.

(ii) Except as provided in division (iii) of this subparagraph, any probationary licensee violating any state law or local ordinance involving an offense listed in Code Section 40-5-54 or Code Section 40-6-391 shall be guilty of a felony and shall be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(iii) Any probationary licensee violating any state law or local ordinance involving a felony offense listed in Code Section 40-5-54 shall be guilty of a felony and shall be punished as is provided for conviction of such felony.

(B) Any probationary licensee who is convicted of violating, or who pleads nolo contendere to a charge of violating, any state law

or local ordinance involving an offense listed in Code Section 40-5-54 or Code Section 40-6-391 or any probationary licensee who is convicted of violating, or who pleads nolo contendere to a charge of violating, the conditions endorsed on his license, shall have his license revoked by the department. Any court in which such conviction is had or in which said nolo contendere plea is accepted shall require the licensee to surrender the license to the court. The court shall forward the license to the department within ten days after the conviction or acceptance of the plea, with a copy of the conviction. Any person whose probationary license is revoked for committing an offense listed in Code Section 40-5-54 or Code Section 40-6-391 shall not be eligible to apply for a regular driver's license until the expiration of the original five-year revocation period during which the probationary license was originally issued or for a period of two years following the conviction, whichever is greater.

(C) If the commissioner has reason to believe or makes a preliminary finding that the requirements of the public safety or welfare outweigh the individual needs of a person for a probationary license, the commissioner, in his discretion, after affording the person notice and an opportunity to be heard, may refuse to issue the license under this subsection.

(D) Any person whose probationary driver's license has been revoked shall not be eligible to apply for a subsequent probationary license under this Code section for a period of five years.

(7) Any person whose probationary license has been revoked or who has been refused a probationary license by the department may make a request in writing for a hearing to be provided by the department. Such hearing shall be provided by the department within 30 days after the receipt of such request and shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Appeal from such hearing shall be in accordance with Chapter 13 of Title 50.

(f) If a person's license was revoked for a violation of Code Section 40-6-391 resulting from a motor vehicle collision in which any person lost his life, the person whose license was revoked shall not be entitled to a probationary license as set forth in this Code section. (Code 1933, § 68B-308, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 307, § 3; Ga. L. 1978, p. 225, § 1; Ga. L. 1980, p. 691, §§ 2, 3; Ga. L. 1982, p. 3, § 40; Ga. L. 1982, p. 867, § 1; Ga. L. 1982, p. 1862, § 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 1000, § 5; Ga. L. 1984, p. 22, § 40; Ga. L. 1984, p. 797, §§ 1, 2; Ga. L. 1985, p. 758, §§ 5, 6; Ga. L. 1987, p. 1082, §§ 2, 3; Ga. L. 1988, p. 385, § 1; Ga. L. 1988, p. 897, § 3; Ga. L. 1988, p. 1893, § 1A; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 1154, § 2; Ga. L.

1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 19; Ga. L. 1992, p. 2556, § 1; Ga. L. 1992, p. 2785, § 8; Ga. L. 1994, p. 745, § 1; Ga. L. 2000, p. 951, §§ 5-21, 5-22; Ga. L. 2000, p. 1204, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2006, p. 449, § 7/HB 1253; Ga. L. 2011, p. 99, § 58/HB 24; Ga. L. 2011, p. 355, § 5/HB 269; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2014, p. 710, § 1-10/SB 298.)

The 2011 amendments. — The first 2011 amendment, effective January 1, 2013, inserted “or 24-4-410” near the beginning of subsection (d). See editor’s note for applicability. The second 2011 amendment, effective January 1, 2012, substituted the present provisions of subsection (b) for the former provisions, which read: “When the records of the department disclose that any person has been arrested and convicted of a violation of Chapter 6 of this title, or of a valid local ordinance adopted pursuant thereto, of an offense occurring on or after January 1, 1976, which record of arrest and conviction, when taken with and added to previous arrests and convictions of such person as contained in the files of the department, reveals that such person is a habitual violator as defined in subsection (a) of this Code section, the department shall forthwith notify such person that upon the date of notification such person has been declared by the department to be a habitual violator, and that henceforth it shall be unlawful for such habitual violator to operate a motor vehicle in this state unless otherwise provided in this Code section. Notice shall be given by certified mail or statutory overnight delivery, with return receipt requested; or, in lieu thereof, notice may be given by personal service upon such person. In the event that at the time of determination the habitual violator had been issued a driver’s license, such license shall be revoked by such notice and shall be surrendered to the department within ten days of notification of such determination. For the purposes of this chapter, notice given by certified mail or statutory overnight delivery with return receipt requested mailed to the person’s last known address shall be prima-facie evidence that such person received the required notice. In addition to the procedure set forth in this subsection, the sentencing judge or prosecutor in a conviction which conviction

classifies the defendant as a habitual violator may, at the time of sentencing, declare such defendant to be a habitual violator. The judge or prosecutor shall, when declaring a defendant to be a habitual violator, then give personal notice to such defendant on forms provided by the department that henceforth it shall be unlawful for such habitual violator to operate a motor vehicle in this state unless otherwise provided in this Code section. The judge or prosecutor, as the case may be, shall within three days forward to the department the order declaring that the defendant is a habitual violator, the notice of service, with the defendant’s driver’s license or a sworn affidavit of the defendant declaring that the driver’s license has been lost, and the department’s copy of the uniform citation or the official notice of conviction attached thereto.”; and inserted “or Chapter 6 of this title” in subparagraph (e)(1)(B). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “Code Section 40-5-61 may be issued” for “Code Section 40-5-61, such person may be issued” in the introductory language of paragraph (e)(1).

The 2014 amendment, effective July 1, 2014, inserted “approved by the commissioner pursuant to Code Section 40-5-83” in subparagraph (e)(1)(C).

Cross references. — Surrender of license plates of habitual violators, § 40-2-136. Seizure and forfeiture of motor vehicle operated by habitual violator, § 40-6-391.2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, a semicolon was substituted for a colon at the end of subparagraph (e)(4)(B).

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article on the effect of receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723

(1979). For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982). For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

NOTICE

PRACTICE AND PROCEDURE

SENTENCE AND APPEAL

General Consideration

Constitutionality. — All habitual violators under former Code 1933, § 68B-308 were treated equally, and that section was not arbitrary, unreasonable, or without rational basis, nor did the statute deny equal protection of the laws. *Cox v. State*, 241 Ga. 154, 244 S.E.2d 1 (1978) (see O.C.G.A. § 40-5-58).

Because the equal protection clause of the Fourteenth Amendment does not deny a state the power to treat different classes of people in different ways, the General Assembly could have reasonably concluded that habitual violators are more dangerous than those who have had their licenses suspended or revoked. Thus, a defendant was not denied equal protection when the defendant was sentenced as a habitual violator under O.C.G.A. § 40-5-58(c) rather than being sentenced under O.C.G.A. § 40-5-121. *Gaines v. State*, 260 Ga. 267, 392 S.E.2d 524 (1990).

Statutory scheme of an administrative appeal and a de novo review in the superior court of the revocation of a habitual offender's license meets the due process requirements of both the state and federal constitutions. *Miller v. State*, 243 Ga. App. 764, 533 S.E.2d 787 (2000).

Three separate and unrelated transactions are required for designation as a habitual violator. *Wilson v. Miles*, 218 Ga. App. 806, 463 S.E.2d 381 (1995).

Even if there were fewer than three arrests. — Notwithstanding that three

separate and unrelated transactions are required to designate a person as a habitual violator and that the defendant was so designated on the basis of three convictions arising from 2 arrest incidents, the defendant could still be convicted for driving after being declared a habitual violator as such a conviction required proof only that the defendant was declared an habitual violator and that the defendant thereafter operated a vehicle without a valid driver's license. *Hollis v. State*, 234 Ga. App. 269, 505 S.E.2d 837 (1998).

Change in law does not rescind status. — Change in the law after one has been declared a habitual violator does not automatically rescind that status. *State v. Oliver*, 202 Ga. App. 613, 415 S.E.2d 54 (1992).

Pre-1982 reckless driving conviction to be disregarded. — The 1982 amendment of O.C.G.A. § 40-5-58, which deleted the offense of reckless driving from those offenses which contribute to habitual violator status under that section, should be given retroactive effect so as to require the superior court to disregard a pre-1982 reckless driving conviction in assessing the sufficiency of the evidence to support the revocation of a license. *Galletta v. Hardison*, 168 Ga. App. 36, 308 S.E.2d 47 (1983).

Separate and distinct nature of subsection (c) violation. — Offense of violating subsection (c) of O.C.G.A. § 40-5-58 is an offense separate and distinct from offenses which led to a driver

being declared a habitual violator. *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982).

Indictment for subsection (c) violation. — In a prosecution for operating a motor vehicle after being declared a habitual violator, failure of the indictment to plead all known convictions against the defendant for driving under the influence did not result in error for fatal variance; rather, the indictment properly pled the instant violation of O.C.G.A. § 40-5-58, giving the defendant due notice of that which the defendant was to defend against and protecting the defendant from again being tried thereon, the proper measure of the defendant's entitlement. *Spruell v. State*, 217 Ga. App. 150, 456 S.E.2d 740 (1995).

Effect of subsection (d). — Effect of subsection (d) of O.C.G.A. § 40-5-58 is to create an exception to the rule of O.C.G.A. § 17-7-95, concerning the consequences of a plea of *nolo contendere*. This does not result in subsection (d) running afoul of the prohibition in Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see Ga. Const. 1983, Art. III, Sec. V, Para. III) against the passage of a law referring to more than one subject matter or containing matter different from what is expressed in the title. *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982).

Subsection (d) of O.C.G.A. § 40-5-58 does not constitute an amendment to or repeal of O.C.G.A. § 17-7-95, dealing with *nolo contendere* pleas generally, within the meaning of Ga. Const. 1976, Art. III, Sec. VII, Para. XII (see Ga. Const. 1983, Art. III, Sec. V, Para. IV). *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982).

Section applies to private as well as public roads. — After the defendant was convicted of operating a motor vehicle, while driving on a private road, after having been declared a habitual violator, and the defendant contended on appeal that because the state issues a driver's license for operation of a motor vehicle "upon a highway in this state," O.C.G.A. § 40-5-20(a), and because the statutory provisions concerning license revocation refer to "public highways," O.C.G.A. §§ 40-5-1(10) (now O.C.G.A. § 40-5-1(16)) and 40-5-121(a), the defendant could not

be convicted of the charged crime, the trial court did not err since O.C.G.A. § 40-5-58, under which appellant was convicted, evinces a clear legislative intent to prohibit a person who has been declared a habitual violator and whose license has been revoked from operating a vehicle anywhere in the state. *Jarrad v. State*, 195 Ga. App. 704, 394 S.E.2d 555 (1990).

Driver's license needed to be in control of vehicle. — "Driver's" license is needed in Georgia, by the law's definition, not only to drive, but a license is needed more broadly to operate, which includes not only driving but also being in actual physical control short of driving. *Miller v. State*, 202 Ga. App. 414, 414 S.E.2d 326 (1992).

Driving vehicle after receiving notice of license revocation. — O.C.G.A. § 40-5-58 prohibits driving a vehicle after receiving notice that one's license has been revoked as a habitual violator. *Hester v. State*, 159 Ga. App. 642, 284 S.E.2d 659 (1981); *Hyde v. State*, 205 Ga. App. 754, 424 S.E.2d 39 (1992).

Once a habitual violator has been notified under O.C.G.A. § 40-5-58 it is unlawful for that person to operate a motor vehicle until that person becomes eligible for, applies for, and receives a new license, regardless of the five-year limitation. *Kimbrell v. State*, 164 Ga. App. 344, 296 S.E.2d 206 (1982).

Effect of valid license from another state. — Regardless of possession of a driver's license from any other state, one who has had one's Georgia driver's license revoked by the Department of Public Safety can legally thereafter operate a vehicle in Georgia only if the Department reauthorizes one to do so. *Goblet v. State*, 174 Ga. App. 675, 331 S.E.2d 56 (1985).

Once an individual has been declared a habitual violator, one may not thereafter avoid prosecution for driving a motor vehicle in this state by merely having in one's possession an ostensibly valid license from another state. *Goblet v. State*, 174 Ga. App. 675, 331 S.E.2d 56 (1985).

Effect of probationary license on driving without license offense. — Conviction against the defendant for driving without a valid license after being declared a habitual violator in violation of

General Consideration (Cont'd)

O.C.G.A. § 40-5-58(c)(1) could not stand because at the time of an accident that the defendant was involved in, the defendant had been issued a probationary driver's license pursuant to § 40-5-58(e). *Christian v. State*, 297 Ga. App. 596, 677 S.E.2d 767 (2009).

Driving with suspended or revoked license is lesser included offense. — Driving with a suspended or revoked license was a lesser included offense of operating a motor vehicle after revocation of one's license as a habitual violator, when the defendant had been stopped by the police while operating an automobile on an interstate highway at a time when the defendant's Georgia driver's license was revoked due to the defendant's having been declared a habitual violator. *Parks v. State*, 180 Ga. App. 31, 348 S.E.2d 481 (1986).

Probationary driver's license prevented conviction of being habitual violator operating without license. — Because the charge of being a habitual violator operating a vehicle without a valid driver's license, O.C.G.A. § 40-5-58(c)(1), demanded a verdict of acquittal as a matter of law and the trial court erred by denying the defendant's motion for a directed verdict; the defendant was not driving without a valid driver's license because the arresting officer testified that the defendant had a probationary driver's license on the day of the arrest. *Murray v. State*, 315 Ga. App. 653, 727 S.E.2d 267 (2012).

Merger of offenses. — Defendant's convictions for operating a motor vehicle under the influence of alcohol while having a probationary license and driving under the influence of alcohol could not both stand since, under the facts, the latter was a lesser included offense in the violation of the probationary license offense. *Williams v. State*, 223 Ga. App. 209, 477 S.E.2d 367 (1996).

Convictions under both O.C.G.A. §§ 40-5-58(c) and 40-6-395(b)(5)(A) were proper under O.C.G.A. § 16-1-6 as the elements of both charged offenses required different proof. Under O.C.G.A. § 40-5-58(c), the state proved that the

defendant was declared an habitual violator, was properly notified of such status, and that the defendant operated a vehicle without having obtained a valid driver's license; while under O.C.G.A. § 40-6-395(b)(5)(A), proof that the driver committed a misdemeanor while fleeing or attempting to elude, that the driver was trying to escape arrest for a felony offense other than road violations, and that the driver committed one of the statutorily enumerated acts was required. *Buggay v. State*, 263 Ga. App. 520, 588 S.E.2d 244 (2003).

Double jeopardy plea when both §§ 40-5-58 and 40-5-121 charged. — When a defendant was convicted of driving with a suspended license in violation of O.C.G.A. § 40-5-121 and was later indicted for a violation of O.C.G.A. § 40-5-58, based upon the defendant's operation of a motor vehicle after the defendant had been notified that the defendant had been declared a habitual violator, the trial court was ordered to reconsider the court's denial of the defendant's double-jeopardy plea on grounds that the same conduct established the commission of all crimes. *Whaley v. State*, 260 Ga. 384, 393 S.E.2d 681 (1990).

Possession of license unnecessary for classification as habitual offender. — It is not necessary that a traffic offender have a driver's license to be classified as a "habitual violator," and when such habitual violator is notified of that classification, what is suspended is the driver's right "to operate a motor vehicle in this state." *Mays v. State*, 190 Ga. App. 390, 378 S.E.2d 145 (1989).

Obtaining of license by habitual violator. — Fact that a person had obtained a driver's license did not give the person permission to drive in contravention of that person's habitual violator status. *Walls v. State*, 167 Ga. App. 276, 306 S.E.2d 371 (1983).

One who has been properly notified that one has been declared a habitual violator by this state can thereafter lose that status and drive in Georgia only after the passage of five years and, pursuant to an application, the Department of Public Safety has determined that it will be safe to grant that person the privilege of driv-

ing a motor vehicle on the public highways. *Goblet v. State*, 174 Ga. App. 675, 331 S.E.2d 56 (1985).

Date used for determining habitual violator status. — Date of offense is date used for purpose of determining habitual violator status under O.C.G.A. § 40-5-58. *Hardison v. Boyd*, 174 Ga. App. 71, 329 S.E.2d 198 (1985).

Crucial date, insofar as habitual violator status is concerned, is the date of driving, not the date on which the status is challenged or set aside. If the person is driving despite notification that the person may not do so because the person had been declared a habitual violator, the person is flaunting the law even if one or more of the underlying convictions is voidable. *State v. Bell*, 182 Ga. App. 860, 357 S.E.2d 596 (1987), cert. denied, 182 Ga. App. 911, 357 S.E.2d 596 (1988).

Date of beginning of revocation period. — Defendant's five-year revocation period began when the defendant was notified of the defendant's status as a habitual violator, not on the date when the defendant was stopped for driving under the influence. *England v. State*, 232 Ga. App. 842, 502 S.E.2d 770 (1998).

Trial court erred in ruling that the revocation of a licensee's driver's license as a habitual violator was effective in May 2006 when the Georgia Department of Driver Services (DDS) received official notice of the licensee's December 2004 conviction on a third driving under the influence charge; the habitual violator revocation was effective in December 2004 as at that time, pursuant to O.C.G.A. § 40-5-58(b), the licensee had been advised of the licensee's habitual violator status and DDS informed the licensee that the licensee's driver's license was revoked for five years. *Lokey v. Ga. Dep't of Driver Servs.*, 291 Ga. App. 856, 663 S.E.2d 283 (2008).

License revocation period begins upon license's surrender. — While it is illegal for a person to drive a motor vehicle after the person has received notice of habitual violator status, the five-year period of revocation prior to application for a new license begins to run only after the license is surrendered or the license's absence accounted for. *Colquitt v. State*, 176

Ga. App. 371, 336 S.E.2d 306 (1985).

Computing eligibility for probationary license. — Department properly used the date of a driver's affidavit stating that the driver was unable to surrender a driver's license because the driver had never received the license from the examining board as the starting point for computing the driver's eligibility for probationary license. *Earp v. Jordan*, 197 Ga. App. 253, 398 S.E.2d 205 (1990).

Consideration of offenses subject to collateral attack. — Person may be subjected to felony punishment as a habitual violator under subsection (c) of O.C.G.A. § 40-5-58, even though offenses giving rise to the person's having been declared a habitual violator are subject to collateral attack on constitutional grounds. *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982); *Todd v. State*, 163 Ga. App. 814, 294 S.E.2d 714 (1982).

Entire driving record is immaterial to prosecution. — It is notice of one's status as a nonlicensed habitual violator, not the driving record underlying that status, that is an "essential element" of O.C.G.A. § 40-5-58, and the entire driving record of the defendant is "immaterial" to a prosecution under that section. *Hester v. State*, 159 Ga. App. 642, 284 S.E.2d 659 (1981); *Hyde v. State*, 205 Ga. App. 754, 424 S.E.2d 39 (1992).

Sanctions for driving too fast. — License's cancellation, suspension, or revocation is not required for conviction for driving too fast. A conviction for driving too fast for conditions is not a conviction which singularly, or in combination with any other offense or offenses, statutorily requires the cancellation, suspension, or revocation, or authorizes a court or the department to impose the suspension or revocation of a driver's license as required by paragraph (a)(2) of former Code 1933, § 68B-308. *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980) (see O.C.G.A. § 40-5-58).

Habitual traffic violator conviction admissible in other proceeding. — Evidence of defendant's felony conviction for driving a motor vehicle after having been declared a habitual traffic violator was admissible despite the defendant's contention that the conviction might suggest to

General Consideration (Cont'd)

the jury that the defendant was a career criminal rather than merely a habitual traffic violator, since the state agreed with the defense that the court could include in the court's instructions a definition of the offense. *Tharpe v. State*, 262 Ga. 110, 416 S.E.2d 78 (1992), cert. denied, 506 U.S. 942, 113 S. Ct. 383, 121 L. Ed. 2d 292 (1992).

Imposition of felony punishment. — Felony punishment may be imposed for driving after being declared a habitual violator, even if the convictions on which the habitual violator status is based are subject to collateral attack on constitutional grounds, such as not having counsel when convicted. *Love v. Hardison*, 166 Ga. App. 677, 305 S.E.2d 420 (1983).

Reliance on nolo contendere in classifying habitual violator. — Language of former Code 1933, § 68B-312 (see O.C.G.A. § 40-5-63(a)(3)) permitted the department to rely upon a nolo contendere accepted prior to the effective date of this article as a conviction in classifying a person as a habitual violator. *Cofer v. Crowell*, 146 Ga. App. 639, 247 S.E.2d 152 (1978).

Meaning of "operate." — Term "operate" does not necessarily mean drive, although the term can include drive. *Miller v. State*, 202 Ga. App. 414, 414 S.E.2d 326 (1992).

To "operate" means "to drive" or "to be in actual physical control." *Miller v. State*, 202 Ga. App. 414, 414 S.E.2d 326 (1992).

"Valid driver's license" construed. — "Valid driver's license," referred to in O.C.G.A. § 40-5-58(c) means a license which is in the possession of a former habitual violator whose privilege to operate a motor vehicle in this state has been restored by the Department of Public Safety. *Goblet v. State*, 174 Ga. App. 675, 331 S.E.2d 56 (1985).

Bond forfeiture treated as "conviction." — Definition of "conviction" given in former Code 1933, § 68B-101 (see O.C.G.A. § 40-5-1(6)) clearly evidenced the legislature's intention that a bond forfeiture arising from a driving under the influence of alcohol or drug offense committed prior to the enactment of former

Code 1933, § 68B-308 (see O.C.G.A. § 40-5-58) was considered a conviction for the purpose of those provisions. *Cofer v. Crowell*, 146 Ga. App. 639, 247 S.E.2d 152 (1978).

O.C.G.A. § 40-5-1(4) (now O.C.G.A. § 40-5-1(6)) treats bond forfeiture as a "conviction" for purposes of O.C.G.A. § 40-5-58. *Haley v. Hardison*, 247 Ga. 750, 279 S.E.2d 712 (1981).

Neither state nor federal procedural due process bars the General Assembly from defining "conviction" in O.C.G.A. § 40-5-1 to include forfeiture of bail or collateral. *Haley v. Hardison*, 247 Ga. 750, 279 S.E.2d 712 (1981).

Applicability of § 40-5-34(c). — Former Code 1933, § 68B-216 applied only when a medical condition formed the basis for not issuing or reissuing a license, not where the action of the department in revoking a driver's license was based on the driver's repeated convictions of driving while under the influence of alcohol. *Camp v. Department of Pub. Safety*, 241 Ga. 419, 246 S.E.2d 296 (1978) (see O.C.G.A. § 40-5-34(c)).

Trial on accusation rather than indictment. — Felony charge of driving after having been declared a habitual violator may be tried on an accusation preferred by a district attorney rather than on an indictment returned by a grand jury. *State v. Gilstrap*, 230 Ga. App. 281, 495 S.E.2d 885 (1998).

Cited in *State v. Gilder*, 145 Ga. App. 731, 245 S.E.2d 3 (1978); *State v. Gilder*, 242 Ga. 285, 248 S.E.2d 659 (1978); *Crosby v. State*, 148 Ga. App. 215, 251 S.E.2d 81 (1978); *Cofer v. Gibson*, 148 Ga. App. 572, 252 S.E.2d 6 (1978); *Flakes v. State*, 243 Ga. 699, 256 S.E.2d 379 (1979); *Kelly v. Cofer*, 150 Ga. App. 24, 256 S.E.2d 635 (1979); *Knight v. State*, 243 Ga. 770, 257 S.E.2d 182 (1979); *Benton v. State*, 150 Ga. App. 647, 258 S.E.2d 298 (1979); *Akin v. Hardison*, 245 Ga. 57, 262 S.E.2d 814 (1980); *Magruder v. Cofer*, 153 Ga. App. 7, 264 S.E.2d 506 (1980); *Hight v. State*, 153 Ga. App. 196, 264 S.E.2d 717 (1980); *Moon v. State*, 156 Ga. App. 877, 275 S.E.2d 813 (1981); *Beasley v. State*, 157 Ga. App. 94, 276 S.E.2d 144 (1981); *Wallace v. State*, 158 Ga. App. 338, 280 S.E.2d 385 (1981); *Gilstrap v. State*, 159

Ga. App. 11, 282 S.E.2d 644 (1981); *Hill v. State*, 159 Ga. App. 589, 284 S.E.2d 92 (1981); *Rowland v. State*, 161 Ga. App. 525, 289 S.E.2d 15 (1982); *Sampson v. Hardison*, 291 S.E.2d 134 (1982); *Hardison v. Hall*, 162 Ga. App. 342, 291 S.E.2d 416 (1982); *Williams v. State*, 162 Ga. App. 415, 291 S.E.2d 732 (1982); *Noles v. State*, 164 Ga. App. 191, 296 S.E.2d 768 (1982); *Stewart v. State*, 165 Ga. App. 62, 299 S.E.2d 134 (1983); *Carroll v. Holt*, 251 Ga. 144, 304 S.E.2d 60 (1983); *Hunt v. State*, 166 Ga. App. 524, 304 S.E.2d 576 (1983); *Sultenfuss v. State*, 169 Ga. App. 618, 314 S.E.2d 459 (1984); *Webster v. State*, 170 Ga. App. 102, 316 S.E.2d 503 (1984); *Parker v. State*, 170 Ga. App. 333, 317 S.E.2d 209 (1984); *Luke v. State*, 177 Ga. App. 518, 340 S.E.2d 30 (1986); *Schofill v. State*, 183 Ga. App. 251, 358 S.E.2d 651 (1987); *Pitts v. State*, 184 Ga. App. 220, 361 S.E.2d 234 (1987); *Hale v. State*, 188 Ga. App. 524, 373 S.E.2d 250 (1988); *Earp v. Brown*, 260 Ga. 215, 391 S.E.2d 396 (1990); *Metheny v. State*, 197 Ga. App. 882, 400 S.E.2d 25 (1990); *Curry v. State*, 206 Ga. App. 350, 425 S.E.2d 389 (1992); *Turner v. State*, 210 Ga. App. 303, 436 S.E.2d 229 (1993); *Hastings v. State*, 211 Ga. App. 873, 441 S.E.2d 83 (1994); *Funderburk v. State*, 221 Ga. App. 438, 471 S.E.2d 535 (1996); *Lanier v. State*, 238 Ga. App. 875, 517 S.E.2d 106 (1999); *Tharpe v. Head*, 272 Ga. 596, 533 S.E.2d 368 (2000); *Dozier v. Jackson*, 282 Ga. App. 264, 638 S.E.2d 337 (2006); *Brantley v. State*, 290 Ga. App. 764, 660 S.E.2d 846 (2008); *Petway v. State*, 291 Ga. App. 301, 661 S.E.2d 667 (2008).

Notice

Notice provisions of section constitutional. — Notice provisions in former Code 1933, § 68B-308 meet the constitutional standards of due process. *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980) (see O.C.G.A. § 40-5-58).

Service of notice is not civil process service. — Service of notice of revocation of a driver's license as a habitual violator under O.C.G.A. § 40-5-58 was not service of a civil process under former O.C.G.A. § 24-10-1 (see now O.C.G.A. § 24-13-1). *Hill v. State*, 162 Ga. App. 637, 292 S.E.2d 512 (1982).

Ten-day notice requirements of § 40-5-53 inapplicable. — Department's jurisdiction and authority to declare a driver a habitual offender does not depend on court's compliance with ten-day notice requirements of O.C.G.A. § 40-5-53(b) (relating to reports of convictions) but depends on the information contained within the department's files as provided by O.C.G.A. § 40-5-58(b). *Hardison v. Orndorff*, 173 Ga. App. 630, 327 S.E.2d 497 (1985).

Relevance of date upon which notice given. — Date upon which notice was given to a habitual violator is relevant to whether the subsequent act of driving is punishable as a felony or a misdemeanor; a nonlicensed habitual violator who drives within five years of notification of that person's status as such is punishable for a felony, whereas a violator who drives more than five years after the notification is punishable for a misdemeanor. *Hyde v. State*, 205 Ga. App. 754, 424 S.E.2d 39 (1992).

Date of notice on indictment. — Since the misdemeanor offense defined in O.C.G.A. § 40-5-58(c)(1) did not contain the element of operating a motor vehicle within five years of notice of revocation, any allegations regarding the time at which the defendant committed the offense of operating a motor vehicle after revocation of the defendant's license and before issuance of a new license were unnecessary. *Woody v. State*, 212 Ga. App. 186, 441 S.E.2d 505 (1994).

Notice by certified mail. — Provision for notice by certified mail affords due process in the administrative function of giving notice that a driver's license is revoked as a habitual violator. *Weaver v. State*, 242 Ga. 8, 247 S.E.2d 749 (1978).

Jury could find that the Department of Public Safety had complied with all the statutory requirements of O.C.G.A. § 40-5-58 when notice was sent by certified mail, return receipt requested, to the licensee at the licensee's last known address, and the return receipt showed that someone at that location accepted delivery of the certified letter addressed to the licensee. *King v. State*, 179 Ga. App. 184, 345 S.E.2d 902 (1986).

Defendant's contention that there was

Notice (Cont'd)

no evidence that the defendant received notice of the defendant's habitual violator status was without merit, since notice of the defendant's habitual violator status was sent by certified mail to the defendant's last known address and the return receipt indicates that the notice was signed for by the defendant. *Johnson v. State*, 194 Ga. App. 501, 391 S.E.2d 132 (1990).

Because the state provided evidence that notice of habitual violator status was sent to the defendant at the defendant's last known address and the return receipt clearly had the defendant's printed name and signature under the "received by" section of the return receipt, and because the defendant failed to rebut this evidence, the jury was authorized to conclude that the Department of Public Service complied with the statutory notice requirements. *West v. State*, 300 Ga. App. 583, 685 S.E.2d 486 (2009).

Personal service of notice by police officer sufficient. — Proper notice was effected after the defendant was personally served by a county police officer with the notice of revocation and declaration as a habitual offender, and personally signed that notice, and the document was returned and placed in the files of the Department of Public Safety. *Stowe v. State*, 176 Ga. App. 169, 335 S.E.2d 431 (1985).

After a police officer read the notice to the defendant, who in turn refused to sign the notice, and this service and refusal was witnessed by another police officer, such personal service was sufficient to satisfy the intent and notice requirements of O.C.G.A. § 40-5-58(b). *Waits v. State*, 194 Ga. App. 284, 390 S.E.2d 296 (1990).

Attempted personal service followed by refusal to accept. — When a state trooper attempted to personally serve the defendant with an "Official Notice of Revocation" and the defendant refused to accept, the service comported with the notice requirements. *Wellons v. State*, 152 Ga. App. 523, 263 S.E.2d 212 (1979).

Reading habitual violator declaration sufficient notice. — When a state patrol officer read the defendant the con-

tents of a request which stated that the defendant had been declared a habitual violator, told the defendant that the defendant would be unable to drive a vehicle, and that if the defendant did the defendant would be subject to imprisonment, there was sufficient compliance with the notice requirements of former Code 1933, § 68B-308. *Cooper v. State*, 156 Ga. App. 108, 274 S.E.2d 112 (1980) (see O.C.G.A. § 40-5-58).

Misleading notice held sufficient. — Notice relied on by the state to establish the "essential element" of notification was actively misleading insofar as the notice specified that the defendant's exposure to felony sanctions for operating a motor vehicle without a valid driver's license would last only five years; however, the notice was sufficient to support a conviction for the misdemeanor offense of driving without a license. *Connelly v. State*, 181 Ga. App. 261, 351 S.E.2d 702 (1986).

Sufficient evidence to convict. — There was sufficient evidence to convict the defendant of a habitual violator offense since a habitual violator notice revoking the defendant's driver's license was sent by registered mail to the address the defendant provided and was signed for in the defendant's name at that address, and since the defendant admitted surrendering the defendant's driver's license, and admitted knowing the defendant was not supposed to be driving. *Allain v. State*, 202 Ga. App. 706, 415 S.E.2d 315 (1992).

Failure to notify of rights deemed harmless. — Though the notice of revocation of licenses was materially defective in that the notice did not contain any information about the revoked licensee's right to request a departmental hearing and the licensee's subsequent appellate rights, this oversight was rendered harmless when the licensee was granted an out-of-time hearing and pursued the licensee's appellate rights by bringing the adverse department decision to the superior court. *Hardison v. Booker*, 179 Ga. App. 693, 347 S.E.2d 681 (1986).

Practice and Procedure

Prosecutorial discretion. — Even if the defendant admits notice that the defendant had the legal status of habitual

violator, the state is not bound to charge the defendant with a felony under O.C.G.A. § 40-5-58 and is not precluded from charging the defendant with a O.C.G.A. § 40-5-121 misdemeanor. The decision of whether to prosecute and what charges to file are decisions that rest in the prosecutor's discretion. *Noeske v. State*, 181 Ga. App. 778, 353 S.E.2d 635 (1987).

Indictment not defective. — An indictment on November 18, 1986, for alleged offenses occurring on May 10 and August 22, 1986, based on the operation of a motor vehicle on those dates after being declared a habitual violator on February 7, 1986, is not defective and is not subject to a motion to quash since the offenses upon which the habitual violator status was based were set aside as "null and void" on September 18, 1986, since driving a motor vehicle after revocation of a license upon being declared a habitual violator is an offense separate and distinct from the offenses which led to the driver's being declared a habitual violator. *State v. Tart*, 183 Ga. App. 737, 359 S.E.2d 722 (1987).

Challenge to indictment. — Defendant waived the defendant's claim that the defendant should have been sentenced for a misdemeanor rather than a felony on the basis that the language of the accusation did not specify felony because the defendant's argument addressed a defect in the accusation and should have been raised by special demurrer. *England v. State*, 232 Ga. App. 842, 502 S.E.2d 770 (1998).

Location of operation of vehicle not required in indictment. — Elements required for the offense of operating a motor vehicle after having been declared to be a habitual violator do not include any specific location in which the motor vehicle is operated; therefore, the state did not have to prove that the defendant operated a vehicle on the street named in the indictment since the location named in the indictment, with the exception of the county, is immaterial and pure surplusage. *Stacey v. State*, 214 Ga. App. 130, 447 S.E.2d 339 (1994).

Failure to set out prior convictions in indictment. — Indictment under sub-

section (c) of former Code 1933, § 68B-308 was not deficient if the indictment failed to set out prior convictions, but stated that the defendant was a habitual violator because this gave notice that the defendant's past record of traffic offenses will be used to prove the commission of the crime. *Weaver v. State*, 242 Ga. 8, 247 S.E.2d 749 (1978) (see O.C.G.A. § 40-5-58).

No need to prove prior convictions.

— State is not required to prove previous convictions which led to a party being declared a habitual violator. *Bollen v. State*, 155 Ga. App. 181, 270 S.E.2d 227 (1980); *Hester v. State*, 159 Ga. App. 642, 284 S.E.2d 659 (1981).

Conviction under O.C.G.A. § 40-5-58 need not be based upon proof of prior traffic offenses as such proof is immaterial in a prosecution under that section. *Hester v. State*, 159 Ga. App. 642, 284 S.E.2d 659 (1981).

Consideration of drunk driving conviction in another state. — In determining whether appellee was a habitual violator, appellee's conviction of the offense of driving with an unlawful blood alcohol level in Florida constituted conviction of an offense "substantially conforming to an offense" in O.C.G.A. Art. 15, Ch. 6, T. 40. *Hardison v. Haslam*, 250 Ga. 59, 295 S.E.2d 830 (1982).

Collateral attack of habitual violator status. — Driver who is declared a habitual violator and who has driver's license revoked, based on three convictions for driving under the influence within five years, is not permitted to collaterally attack one's habitual violator status by attacking the validity of one of the driver's prior convictions. *Love v. Hardison*, 166 Ga. App. 677, 305 S.E.2d 420 (1983).

State must prove defendant operated vehicle after receiving revocation notice. — An essential element of the offense under subsection (c) of former Code 1933, § 68B-308 was that the defendant operated a motor vehicle after receiving notice that the defendant's license had been revoked. On the trial of the case, the state has the burden of proving this notice. *Weaver v. State*, 242 Ga. 8, 247 S.E.2d 749 (1978) (see O.C.G.A. § 40-5-58).

Practice and Procedure (Cont'd)

In a prosecution under subsection (c) of O.C.G.A. § 40-5-58, the state has the burden of proving that the defendant was given notice of revocation of the defendant's driver's license because of the defendant having been declared a habitual violator. *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982).

Committing offense after revocation period expires but before new license secured. — When the defendant driver injured a pedestrian while under the influence of alcohol and lacked a license because of a previous revocation, the driver was correctly sentenced under O.C.G.A. § 40-5-58 as a habitual violator notwithstanding that the five-year license revocation period expired prior to the moment of the offense. *Cody v. State*, 170 Ga. App. 712, 318 S.E.2d 503 (1984).

Former jeopardy if charge known to prosecutor when other offenses adjudicated. — Plea of former jeopardy under former Code 1933, § 26-506, based upon the fact that the habitual violator charge was known to the prosecuting officer to arise out of the same conduct as other offenses to which the defendant had previously pled guilty and which laid within the jurisdiction of a single court, required that the state press these matters in a single prosecution, and prohibited belatedly bringing a habitual offender charge. *Carnes v. State*, 242 Ga. 286, 248 S.E.2d 660 (1978) (see O.C.G.A. § 16-1-7).

Proof vehicle moving not required. — Conviction under O.C.G.A. § 40-5-58(c) requires no proof that the vehicle was actually moving. *Mazo v. State*, 224 Ga. App. 744, 481 S.E.2d 831 (1997).

Proof of operation of a vehicle for a nonbusiness purpose was not required in a prosecution for operating a motor vehicle under the influence of alcohol while having a probationary license. *Williams v. State*, 223 Ga. App. 209, 477 S.E.2d 367 (1996).

Admission of evidence by certified document. — Trial court correctly denied the defendant's motion for directed verdict of acquittal on the charge of habitual violator since the state submitted evidence of all material allegations by means

of a properly certified document which was admissible as evidence in any civil or criminal proceeding as proof of the document's contents. *Brown v. State*, 201 Ga. App. 98, 410 S.E.2d 196 (1991).

Introduction into evidence of irrelevant material in driving history. — Entry into evidence of the defendant's entire driving history, which contains not only facts essential to the conviction but also irrelevant additional material, is not reversible error unless prejudice appears and it can be shown that the irrelevant material contributed to the conviction. *Harper v. State*, 175 Ga. App. 702, 334 S.E.2d 30 (1985).

When the state introduced, over the defendant-appellant's objection, the notice of revocation sent to the appellant, to which was attached appellant's entire driving history (exhibit 1), and two prior habitual violator convictions (exhibits 2 and 3), and each exhibit contained evidence of prior driving under the influence (DUI) convictions, and exhibit 2 also included a conviction for public indecency, appellant did not testify at trial, and the prior convictions at issue were unrelated and irrelevant to the charged crime, there was no proper purpose for admission of the public indecency and DUI convictions, thereby necessitating a reversal of the judgment. *Jarrad v. State*, 195 Ga. App. 704, 394 S.E.2d 555 (1990).

In a prosecution under O.C.G.A. § 40-5-58(c), the admission of the defendant's entire driving record when only a portion of the driving record is admissible is reversible error. *Ragan v. State*, 264 Ga. 190, 442 S.E.2d 750 (1994).

Possession of valid license from another state. — Under O.C.G.A. § 40-5-65, possession of a valid license from another state was not a defense to a habitual violator charge and created no presumption that the defendant was authorized to drive in Georgia; since the defendant testified that the defendant never inquired about reinstating the defendant's Georgia driving privileges, the evidence supported the defendant's habitual violator conviction. *Stripling v. State*, 279 Ga. App. 856, 632 S.E.2d 747 (2006).

Evidence sufficient for conviction. — Certified copies of records of the De-

partment of Public Safety constituted sufficient evidence to convict the defendant of operating a motor vehicle after receiving notice that the defendant's license was revoked as a habitual violator. *Hill v. State*, 223 Ga. App. 493, 478 S.E.2d 406 (1996).

Evidence, including the fact that the defendant's driving was unrelated to the limited lawful purposes of a habitual violator's probationary driver's license, was sufficient to sustain conviction. *Kingree v. State*, 228 Ga. App. 71, 491 S.E.2d 123 (1997).

Defendant's admissions that the defendant was at a bar with the defendant's car and too drunk to remember how the defendant got home the evening before the defendant's arrest and proof that the defendant's car was wrecked within a block and a half of the defendant's home, that the defendant had possession of the defendant's car keys shortly after the collision, and that the defendant's driver's license had been revoked based on the defendant's status as a habitual violator at the time of the collision was sufficient to find the defendant guilty of violating O.C.G.A. § 40-5-58(c)(1). *Sams v. State*, 239 Ga. App. 715, 521 S.E.2d 848 (1999).

Evidence that the defendant's license was revoked in 1989, that the license was never reinstated or renewed, and that the defendant drove an automobile on April 9, 1998, without a valid license, was sufficient for conviction. *Brady v. State*, 241 Ga. App. 387, 527 S.E.2d 214 (1999).

Defendant was properly convicted of causing death while operating a vehicle after having been declared a habitual violator (O.C.G.A. § 40-6-393(c)) although the defendant was eligible to apply for a license under O.C.G.A. § 40-5-62(a)(1), the failure to apply for reinstatement of the license after five years elapsed meant that the revocation remained in effect. *Greene v. State*, 278 Ga. App. 848, 630 S.E.2d 123 (2006).

Jury need not accept defendant's explanation. — Jury is not required to accept the defendant's explanation that an emergency required the defendant to drive on the occasion in question. *Cape v. State*, 165 Ga. App. 825, 303 S.E.2d 77 (1983).

Testimony held sufficient to authorize guilty verdict. — Testimony that the defendant drove an automobile coupled with evidence that the defendant's driver's license had been revoked as a habitual offender is sufficient to authorize a rational jury to find guilt beyond a reasonable doubt. *Hester v. State*, 159 Ga. App. 642, 284 S.E.2d 659 (1981).

Instruction on offense authorized. — When the defendant was arrested for driving without a license after an earlier revocation of the defendant's license for being a habitual violator, it was not error for the trial court to charge the jury upon the habitual offender offense alleged in the indictment. *Kelly v. State*, 182 Ga. App. 7, 354 S.E.2d 647 (1987).

Supersedeas does not stay delivery of the defendant's driver's license to Department of Public Safety following the defendant's driving under the influence conviction. *Arnold v. State*, 163 Ga. App. 94, 292 S.E.2d 891 (1982).

Sentence and Appeal

Crime of moral turpitude. — Violation of O.C.G.A. § 40-5-58 reflects a callous and repeated disregard for the safety and welfare of other people, conviction for which is a crime of moral turpitude within the meaning of Ga. Const. 1983, Art. II, Sec. I, Para. III(a). *Jarrard v. Clayton County Bd. of Registrars*, 262 Ga. 759, 425 S.E.2d 874 (1993), overruled on other grounds, *Cook v. Board of Registrars*, 291 Ga. 67, 727 S.E.2d 478 (2012).

Former Code 1933, § 68B-308 was not a recidivist statute. *Bollen v. State*, 155 Ga. App. 181, 270 S.E.2d 227 (1980) (see O.C.G.A. § 40-5-58).

Subsection (c) of former Code 1933, § 68B-308 was not a recidivist statute and in a prosecution under that section it was not necessary to prove the defendant's prior convictions. *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982) (see O.C.G.A. § 40-5-58).

Increased penalty imposed for new crime only. — Habitual violator statute allowing for the consideration of offenses which occurred before the enactment of the statute is not ex post facto. The repetition of the criminal conduct aggravates the offender's guilt and justifies heavier

Sentence and Appeal (Cont'd)

penalties when the offender is again convicted, and the penalty is imposed for a new crime only, but is heavier if the offender is a habitual violator. The increased penalty is for the latest crime, which is considered to be an aggravated offense because it is repetitive. *Cofer v. Crowell*, 146 Ga. App. 639, 247 S.E.2d 152 (1978).

Use of prior convictions. — Appellate court erred in affirming the trial court's ruling that the trial court could consider the defendant's prior convictions in sentencing the defendant as the state conceded at the sentencing hearing before the trial court that the prior convictions, based on guilty pleas, could not be used to enhance the defendant's sentence because the convictions were uncounseled, and, thus, only offered the prior convictions for the trial court to consider how much of the defendant's sentence should be probated. *Thompson v. State*, 276 Ga. 701, 583 S.E.2d 14 (2003).

One-to-five-year sentence not excessive. — Mandatory one-to-five-year sentence for driving with revoked license is neither barbaric nor excessive under the federal Constitution. *Cox v. State*, 241 Ga. 154, 244 S.E.2d 1 (1978).

Trial court properly upheld the decision of the Georgia Department of Driver Services (DDS) revoking a driver's license as of September 11, 2007, based on the driver's status as a habitual offender under O.C.G.A. § 40-5-58(b) due to the driver's 2004 convictions for vehicular homicide, driving under the influence, racing, and failure to maintain lane and DDS' determination that the five-year revocation period commenced from that date as the five-year period could not be reduced by the driver's incarceration time. While the driver's license may have been held by the Department of Corrections while the driver was incarcerated, the five-year revocation period was not subject to reduction by that time because the driver had not been declared a habitual violator by DDS until September 11, 2007. *Eason v. Dozier*, 298 Ga. App. 65, 679 S.E.2d 89 (2009), cert. denied, No. S09C1605, 2009 Ga. LEXIS 794 (Ga. 2009).

Allowable conditions of probation. — Court had authority to impose as a condition of probation the requirement that the defendant wear a fluorescent pink plastic bracelet imprinted with the words "D.U.I. CONVICT." Such requirement did not impose cruel and unusual punishment or deprive the defendant of equal protection and the condition was not an impermissibly indeterminate condition. *Ballenger v. State*, 210 Ga. App. 627, 436 S.E.2d 793 (1993).

Constitutionality of administrative appeal and review scheme. — Georgia scheme of administrative appeal and de novo review in the superior court meets due process hearing requirements of the state and federal Constitutions. *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980).

Right to administrative review and de novo appeal. — Person whose driver's license has been revoked under O.C.G.A. § 40-5-58 by the Department of Public Safety has a right to obtain administrative review of the department decision followed by a de novo appeal to superior court. *Smith v. State*, 248 Ga. 828, 286 S.E.2d 709 (1982).

Revocation not criminal sentence. — Revocation of a license pursuant to former Code 1933, § 68B-303 was clearly not a criminal sentence. *Cofer v. Hawthorne*, 154 Ga. App. 875, 270 S.E.2d 84 (1980) (see O.C.G.A. § 40-5-58).

Failure to preserve objection at trial waived argument on appeal. — Defendant did not object at trial to the Georgia Department of Public Safety documents that were admitted to show the defendant's receipt of notice that the defendant's license had been suspended as a habitual violator nor did the defendant object to any failure of the Department to meet the relevant statutory requirements; thus, the defendant waived argument on appeal concerning their admission into evidence. *Keller v. State*, 271 Ga. App. 79, 608 S.E.2d 697 (2004).

Conviction of driving by habitual traffic violator predicate felony under recidivist statute. — As a violation of O.C.G.A. § 40-5-58(c)(1) (operating a vehicle by a habitual offender whose license has been revoked) is punishable by

one to five years' imprisonment, the offense is a felony. Since a defendant had four prior convictions for violations of § 40-5-58(c)(1), the defendant was properly sentenced as a recidivist under O.C.G.A. § 17-10-7(c). *Hollis v. State*, 295 Ga. App. 529, 672 S.E.2d 487 (2009).

Sentence upheld. — When the driver was declared a habitual violator under provisions of former Code 1933, § 68B-308(a), then was convicted for op-

erating a motor vehicle while the person's license was still revoked pursuant to that action, after the Official Code of Georgia Annotated became effective on November 1, 1982, the revocation of the driver's license was effected "under this Code section" within the meaning of O.C.G.A. § 40-5-58(c), and the driver could be sentenced to a five-year confinement pursuant to that. *Ketchum v. State*, 167 Ga. App. 858, 307 S.E.2d 742 (1983).

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Operation of construction equipment by habitual violator. — Driver declared to be a habitual violator and given notice as provided by law is not guilty of the offense of operating a vehicle after having been declared a habitual violator when the driver operates self-propelled road construction equipment which is not designed or used primarily for the transportation of persons or property so long as such a vehicle is not operated on the highways of this state. 1990 Op. Att'y Gen. No. U90-14.

Prosecution of persons designated as habitual violators before January 1, 1991. — Holding of the Court of Ap-

peals in *Galletta v. Hardison*, 168 Ga. App. 36 (1983) is applicable solely to appeals from driver's license revocations by the Georgia Department of Public Safety and individuals designated as habitual violators prior to January 1, 1991, based upon one or more convictions for driving with a suspended license who drive prior to obtaining reinstatement of their driving privileges by the Department of Public Safety; those drivers are subject to felony prosecution pursuant to subsection (c) of O.C.G.A. § 40-5-58 notwithstanding the 1990 amendment to that Code section. 1992 Op. Att'y Gen. No. U92-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 143 et seq.

ALR. — What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 79 ALR2d 866.

Validity and construction of statute or

ordinance mandating imprisonment for habitual or repeated traffic offender, 2 ALR4th 618.

Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 ALR4th 367.

40-5-59. Reexamination of drivers believed to be incompetent or unqualified.

(a) The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, shall require him to submit to an examination at the nearest license examining facility within ten days of receipt of written notice from the department. Upon the conclusion of such examination, the department shall take action as may be appropriate and may revoke the license of such person or permit him to retain such license or may issue a license subject to restrictions as permitted under Code Section 40-5-30 or

restrictions as to the type or class of vehicles that may be driven. Refusal or neglect of the licensee to submit to such examination shall be grounds for revocation of his license.

(b) Notwithstanding the provisions of subsection (a) of this Code section, the department is authorized to revoke the license of a driver without a preliminary examination or hearing upon a recommendation by a court or prosecutor or upon a showing by the records of the department that the licensee is incapacitated by reason of disease, mental or physical disability, or addiction to alcohol or drugs to the extent that such person is incompetent to operate a motor vehicle.

(c) Any person whose license is revoked pursuant to subsection (b) of this Code section thereafter shall be entitled to a hearing before the department upon receipt by the department of a written request therefor. Such hearing shall be held within 30 days of the receipt of such request. The person may request an opinion of the Driver License Advisory Board as provided for in subsection (c) of Code Section 40-5-34. The department may not grant any exceptions to any regulations issued pursuant to subsection (a) of Code Section 40-5-35. The scope of the hearing shall be to determine if the driver is competent to drive a motor vehicle. The hearing shall be informal and appeal shall be as provided for in Code Section 40-5-66.

(d) The reports required by this Code section shall be confidential and shall be used solely for the purpose of determining the qualifications of any person to drive a motor vehicle on the highways of this state. No civil or criminal action may be brought against any person or agency for providing the information to the department for the purposes of this Code section. The reports, or any reference to the reports, shall not be included in any abstract prepared pursuant to Code Section 40-5-2. (Code 1933, § 68B-309, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2006, p. 449, § 8/HB 1253.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 115.

C.J.S. — 60 C.J.S., Motor Vehicles, § 341 et seq.

ALR. — Automobiles: validity and con-

struction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 ALR4th 367.

40-5-60. When revocation or suspension effective; notice.

(a) All revocations and suspensions provided for in this chapter shall be effective on the day the driver receives actual knowledge or legal notice thereof, whichever occurs first. Notice of suspension by operation of law shall be considered legal notice. Any license suspension or revocation mandated in this chapter following a person's conviction for

any offense, including suspensions due to the accumulation of points pursuant to Code Section 40-5-57, shall be by operation of law.

(b) Notwithstanding any other provision of this chapter to the contrary, for any suspension or revocation for which the department is required to send notice to the driver, the department shall be authorized to direct such notice to the driver's new address as reflected in the records of the United States Postal Service in lieu of or in addition to sending such notice to the address reflected in his or her driving record. (Ga. L. 1976, p. 1668, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2008, p. 171, § 6/HB 1111; Ga. L. 2011, p. 355, § 6/HB 269.)

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo

contendere plea, see 13 Ga. L. Rev. 723 (1979).

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Necessity of actual or constructive notice. — Since one element of the offense of driving while one's license is in a mandatory state of suspension is notice to the defendant of the action, absent proof by the state of actual or legal notice, a conviction for the offense of driving while one's license is suspended cannot be sustained. *State v. Orr*, 246 Ga. 644, 272 S.E.2d 346 (1980).

Conviction for driving while one's license is in a mandatory state of suspension may be sustained when one is charged with constructive notice of suspension by operation of law. *Hale v. State*, 188 Ga. App. 524, 373 S.E.2d 250, cert. denied, 188 Ga. App. 911, 373 S.E.2d 250 (1988).

Notice contemplated by O.C.G.A. § 40-5-60 applies to all suspensions provided for in O.C.G.A. Ch. 5, T. 40, and suspensions under O.C.G.A. § 40-5-57 fall within this class and are not excepted from the general rule. Thus, without proof by the state of actual or legal notice to a defendant of the defendant's license suspension, a conviction under O.C.G.A. § 40-5-121 cannot be sustained. *State v. Fuller*, 289 Ga. App. 283, 656 S.E.2d 902 (2008).

Because there was no evidence that a defendant had received notice of the defendant's license suspension for excessive violation points under O.C.G.A. § 40-5-57, a conviction of driving with a

suspended license in violation of O.C.G.A. § 40-5-121 was properly reversed. Under O.C.G.A. § 40-5-60, notice of a suspension was required for a conviction, and O.C.G.A. § 40-5-57 did not provide for notice by operation of law. *State v. Fuller*, 289 Ga. App. 283, 656 S.E.2d 902 (2008).

Notice sufficient. — Trial court did not err in denying the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 after a jury found the defendant guilty of driving on a suspended license in violation of O.C.G.A. § 40-5-121(a) because there was some evidence that the defendant was served with a notice of suspension pursuant to O.C.G.A. § 40-5-60; the state introduced the defendant's driver's license history report, which showed that the defendant had been served with the notice of the license suspension by a police officer, and the officer testified that the officer served the defendant with the notice. *Sledge v. State*, 312 Ga. App. 97, 717 S.E.2d 682 (2011).

Officer's knowledge of driver's knowledge of suspension status. — Though central dispatch advised an officer that the defendant had not been served with notice of suspension of the defendant's license, the officer had probable cause to arrest the defendant for driving under suspension (O.C.G.A. § 40-5-121) as the officer had no way of knowing whether the defendant had obtained ac-

tual or constructive notice of the suspension by other means. Thus, drugs found in a search of the defendant's car incident to the arrest were admissible; the trial court's ultimate conclusion that the defendant did not have notice of the suspension did not "retroactively vitiate" the probable cause supporting the arrest. *Johnson v. State*, 297 Ga. App. 254, 676 S.E.2d 884 (2009).

Calculating beginning of revocation period when delay of notification. — Trial court erred in ruling that the revocation of a licensee's driver's license as a habitual violator was effective

in May 2006 when the Georgia Department of Driver Services (DDS) received official notice of the licensee's December 2004 conviction for a third driving under the influence charge; the habitual violator revocation was effective on December 16, 2004, the date on which the licensee received legal notice of the licensee's status as a habitual violator and that the licensee's driver's license was being revoked. *Lokey v. Ga. Dep't of Driver Servs.*, 291 Ga. App. 856, 663 S.E.2d 283 (2008).

Cited in *Kimbrell v. State*, 164 Ga. App. 344, 296 S.E.2d 206 (1982).

40-5-61. Surrender and return of license.

(a) The department, upon canceling, suspending, or revoking a license, shall require that such license shall be surrendered to the department and be processed in accordance with the rules and regulations of the department.

(b) Any person whose license has been canceled, suspended, or revoked shall immediately return his license to the department.

(c) It shall be unlawful to refuse to deliver upon a legal demand any driver's license which has been canceled, suspended, or revoked.

(d) Except as provided in Code Section 40-5-62, when the revocation period expires, the department shall reinstate the license to the driver within 30 days.

(e) For the purpose of making any determination under this Code section relating to the return of revoked or suspended licenses to drivers, the period of revocation or suspension shall begin on the date the license is surrendered to the department or a court of competent jurisdiction under any provision of this chapter or on the date that the department processes the citation or conviction, whichever date shall first occur. If the license is lost, or for any other reason surrender to the department is impossible, the period of revocation or suspension may begin on the date set forth in a sworn affidavit setting forth the date and reasons for such impossibility, if the department shall have sufficient evidence to believe that the date set forth in such affidavit is true; in the absence of such evidence, the date of receipt of such affidavit by the department shall be controlling. (Code 1933, § 68B-313, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1668, § 1; Ga. L. 1989, p. 628, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 1993, p. 940, § 3; Ga. L. 2000, p. 951, § 5-23; Ga. L. 2004, p. 471, § 4.)

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Cited in *Earp v. Jordan*, 197 Ga. App. 253, 398 S.E.2d 205 (1990).

40-5-62. Periods of revocation; conditions to restoration of license or issuance of new license.

(a) Unless the revocation was for a cause which has been removed, any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be eligible to apply for a new license nor restoration of his nonresident's operating privilege until:

(1) Five years from the date on which the revoked license was surrendered to and received by the department pursuant to a person's having been declared a habitual violator under Code Section 40-5-58 or from the date on which the department processed the citation or conviction, reduced by a period of time equal to that period of time which elapses between the date the person surrenders his driver's license to the court after conviction for the offense for which the person is declared a habitual violator and the date the department receives such license from the court; or

(2) Such time as any cause for revocation under subsection (b) of Code Section 40-5-59 has been removed.

(b) The department shall not issue a new license nor restore a person's suspended license or nonresident's operating privilege unless and until it is satisfied after investigation of the character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Notwithstanding subsection (a) of this Code section or any other provision of this title, the department shall not issue a new license to any person whose license was revoked as a habitual violator for three violations of Code Section 40-6-391 within a five-year period unless and until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program. The department may issue rules and regulations providing for reinstatement hearings. In the case of a revocation pursuant to Code Section 40-5-58, the department shall charge a fee of \$410.00 or \$400.00 if processed by mail in addition to the fee prescribed by Code Section 40-5-25 to issue a new driver's license to a person whose driver's license has been revoked. (Code 1933, § 68B-310, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1983, p. 487, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 758, § 8; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 19.1; Ga. L.

1993, p. 940, § 4; Ga. L. 2004, p. 471, § 5; Ga. L. 2009, p. 679, § 5/HB 160; Ga. L. 2014, p. 710, § 1-11/SB 298.)

The 2014 amendment, effective July 1, 2014, substituted “completion of a DUI” for “completion of an approved DUI” near the end of the second sentence of subsection (b).

Cross references. — Requirement of proof of financial responsibility for the future as prerequisite to restoration of

driver’s license to person convicted of offense for which license suspension is mandatory, § 40-9-81.

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Revocation not criminal sentence. — Revocation of a license pursuant to former Code 1933, § 68B-308 was clearly not a criminal sentence. *Cofer v. Hawthorne*, 154 Ga. App. 875, 270 S.E.2d 84 (1980) (see O.C.G.A. § 40-5-58).

Delay in transmitting notification. — Under O.C.G.A. § 40-5-53(b), a court of conviction is required to transmit notification of applicable convictions to the Georgia Department of Driver Services within 10 days of the date of conviction, but a trial court’s failure to timely transmit the records, which failure results in delayed revocation of an individual’s license, does not affect the validity of the revocation or the calculation of the five-year period. *Eason v. Dozier*, 298 Ga. App. 65, 679 S.E.2d 89 (2009), cert. denied, No.

S09C1605, 2009 Ga. LEXIS 794 (Ga. 2009).

Revocation continues until reinstatement. — Defendant was properly convicted of causing death while operating a vehicle after having been declared a habitual violator (O.C.G.A. § 40-6-393(c)) although the defendant was eligible to apply for a license under O.C.G.A. § 40-5-62(a)(1), the failure to apply for reinstatement of the license after five years elapsed meant that the revocation remained in effect. *Greene v. State*, 278 Ga. App. 848, 630 S.E.2d 123 (2006).

Cited in *Williams v. State*, 162 Ga. App. 415, 291 S.E.2d 732 (1982); *Kimbrell v. State*, 164 Ga. App. 344, 296 S.E.2d 206 (1982); *Goblet v. State*, 174 Ga. App. 675, 331 S.E.2d 56 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Applicability of procedures. — Procedures of former Code 1933, § 68B-310 should be used without regard to whether the applicant habitual violator was prop-

erly determined to be such by the superior court or by the Department of Public Safety. 1980 Op. Att’y Gen. No. 80-94 (see O.C.G.A. § 40-5-62).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 116.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 353 et seq., 359, 459.

ALR. — Suspension or revocation of driver’s license for refusal to take sobriety test, 88 ALR2d 1064.

Automobiles: validity and construction of legislation authorizing revocation or suspension of operator’s license for “habitual,” “persistent,” or “frequent” violations of traffic regulations, 48 ALR4th 367.

40-5-63. Periods of suspension; conditions to return of license.

(a) The driver's license of any person convicted of an offense listed in Code Section 40-5-54 or of violating Code Section 40-6-391, unless the driver's license has been previously suspended pursuant to Code Sections 40-5-67.1 and 40-5-67.2, shall by operation of law be suspended and such suspension shall be subject to the following terms and conditions; provided, however, that any person convicted of a drug related offense pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of Code Section 40-5-75; and further provided that each charge for which a conviction was obtained shall be treated as a separate transaction for the purpose of imposing a license suspension hereunder, even if said convictions arise from a single incident; and further provided that the department shall treat each conviction received in the order in which said convictions are processed even if it is not the order in which said offenses occurred:

(1) Upon the first conviction of any such offense, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be 12 months. At the end of 120 days, the person may apply to the department for early reinstatement of his or her driver's license. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail, provided that, if such license was suspended as a result of a conviction of an offense listed in Code Section 40-5-54, such license shall be reinstated if such person submits proof of completion of either a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 or a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. A driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. For purposes of this paragraph, an accepted plea of nolo contendere to an offense listed in Code Section 40-5-54 by a person who is under 18 years of age at the time of arrest shall constitute a conviction. For the purposes of this paragraph only, an accepted plea of nolo contendere by a person 21 years of age or older, with no conviction of and no plea of nolo contendere accepted to a charge of violating Code Section 40-6-391 within the previous five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo

contendere accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered a conviction, and the court having jurisdiction shall forward, as provided in Code Section 40-6-391.1, the record of such disposition of the case to the department and the record of such disposition shall be kept on file for the purpose of considering and counting such accepted plea of nolo contendere as a conviction under paragraphs (2) and (3) of this subsection;

(2) Upon the second conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be three years. At the end of 120 days, the person may apply to the department for reinstatement of his or her driver's license; except that if such license was suspended as a result of a second conviction of a violation of Code Section 40-6-391 within five years, the person shall not be eligible to apply for license reinstatement until the end of 18 months. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail, provided that, if such license was suspended as a result of a conviction of an offense listed in Code Section 40-5-54, such license shall be reinstated if such person submits proof of completion of either a defensive driving course approved by the commissioner pursuant to Code Section 40-5-83 or a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. A driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program, provides proof of installation and maintenance of an ignition interlock device for a period of one year coinciding with the issuance of an ignition interlock device limited driving permit as provided in Code Section 40-5-64 unless waived due to financial hardship, and pays the prescribed restoration fee. For purposes of this paragraph, a plea of nolo contendere and all previous accepted pleas of nolo contendere to an offense listed in Code Section 40-5-54 within such five-year period of time shall constitute a conviction. For the purposes of this paragraph, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions; or

(3) Upon the third conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions

were obtained to the date of the current arrest for which a conviction is obtained, such person shall be considered a habitual violator, and said license shall be revoked as provided for in paragraph (1) of subsection (a) of Code Section 40-5-62. For purposes of this paragraph, a plea of nolo contendere and all previous accepted pleas of nolo contendere to an offense listed in Code Section 40-5-54 within such five-year period shall constitute a conviction. For the purposes of this paragraph, a plea of nolo contendere and all prior accepted pleas of nolo contendere to a charge of violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions.

(b) The periods of suspension provided for in this Code section shall begin on the date the person is convicted of an offense listed in Code Section 40-5-54 or of violating Code Section 40-6-391.

(c) In all cases in which the department may return a license to a driver prior to the termination of the full period of suspension, the department may require such tests of driving skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the driver's past driving record and performance, and the driver shall pay the applicable restoration fee. In addition to any other requirement the department may impose, a driver's license suspended as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid, shall remain suspended, and shall not be returned to such driver or otherwise reinstated until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program.

(d)(1) Any person convicted of violating subsection (a) of Code Section 40-6-393, relating to homicide by vehicle, or Code Section 40-6-394, relating to serious injury by vehicle, shall have his or her license suspended for a period of three years. Such person shall not be eligible for early reinstatement of said driver's license as provided in this Code section or in Article 4 of this chapter and shall not be eligible for a limited driving permit as provided in Code Section 40-5-64.

(2) For purposes of this chapter, an accepted plea of nolo contendere to any violation of Code Section 40-6-393 or 40-6-394 shall constitute a conviction.

(e) The driver's license of any person under 21 years of age who is convicted of unlawful possession of alcoholic beverages in violation of Code Section 3-3-23 while operating a motor vehicle may be suspended for a period of not less than 120 days. At the end of 120 days, the person

may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated only if the person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of \$35.00 or \$25.00 when processed by mail. For purposes of this subsection, a sentence under subsection (c) of Code Section 3-3-23.1 shall not be considered a conviction, and the driver's license of such person shall not be suspended, provided that such person completes a DUI Alcohol or Drug Use Risk Reduction Program within 120 days after sentencing.

(f) The driver's license of any person who is convicted of attempting to purchase an alcoholic beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23 upon the first conviction shall be suspended for a period of six months and upon the second or subsequent conviction shall be suspended for a period of one year. At the end of the period of suspension, the person may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated upon payment of a restoration fee of \$35.00 or \$25.00 when processed by mail. For purposes of this subsection, a sentence under subsection (c) of Code Section 3-3-23.1 shall not be considered a conviction, and the driver's license of such person shall not be suspended. (Code 1933, § 68B-312, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1976, p. 1670, § 1; Ga. L. 1978, p. 225, § 4; Ga. L. 1982, p. 3, § 40; Ga. L. 1982, p. 1601, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 487, § 2; Ga. L. 1983, p. 1000, § 6; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 7; Ga. L. 1987, p. 1082, § 4; Ga. L. 1989, p. 1698, § 2; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 3; Ga. L. 1992, p. 779, § 20; Ga. L. 1992, p. 2564, § 2; Ga. L. 1992, p. 2746, § 2; Ga. L. 1992, p. 2785, §§ 9, 10; Ga. L. 1993, p. 940, § 5; Ga. L. 1994, p. 730, § 2; Ga. L. 1997, p. 760, § 16; Ga. L. 1997, p. 1085, § 3; Ga. L. 2000, p. 951, §§ 5-24, 5-25; Ga. L. 2000, p. 1457, § 2; Ga. L. 2001, p. 208, §§ 2-3, 3-3; Ga. L. 2005, p. 334, § 17-15/HB 501; Ga. L. 2006, p. 449, § 9/HB 1253; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2010, p. 932, § 13/HB 396; Ga. L. 2011, p. 355, § 7/HB 269; Ga. L. 2013, p. 878, § 1/HB 407; Ga. L. 2014, p. 710, § 1-12/SB 298.)

The 2013 amendment, effective July 1, 2013, in paragraph (a)(2), substituted "such driver's license" for "said driver's license" in the second sentence, and substituted "one year" for "six months" in the fourth sentence. See editor's note for applicability.

The 2014 amendment, effective July 1, 2014, rewrote subsection (a); and, in subsection (e), substituted "reinstatement of his or her" for "reinstatement of said" near the end of the second sentence and substituted "completion of a DUI" for

"completion of an approved DUI" in the third sentence.

Cross references. — License plate revocations, § 40-2-136. Requirement of proof of financial responsibility for the future as prerequisite to restoration of driver's license to person convicted of offense for which license suspension is mandatory, § 40-9-81. Ignition interlock device requirements, § 42-8-110 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "this paragraph" was substituted for "this subpara-

graph" in the last sentence of paragraph (a)(2).

Pursuant to Code Section 28-9-5, in 1992, subsection (f), added by Ga. L. 1992, p. 2746, § 2, was redesignated as subsection (e), due to the redesignations made by Ga. L. 1992, p. 2564, § 2.

Pursuant to Code Section 28-9-5, in 1994, "drug related" was substituted for "drug-related" in the introductory language of subsection (a).

Editor's notes. — Ga. L. 1990, p. 1154, § 3, effective July 1, 1990, amended former Code Section 40-5-70. Since Ga. L. 1990, p. 2048, § 4, incorporated the provisions of former Code Section 40-5-70 into this Code section, those amendments have been given effect in this Code section.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the

"Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2013, p. 878, § 5/HB 407, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses committed on or after such date."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

Warning need not exactly track statutory language. — When the defendant contended that evidence of the defendant's refusal to submit to a chemical test to determine the alcohol content of the defendant's blood should not have been admitted because the defendant had been erroneously advised by the arresting officer that the defendant's driver's license would be suspended "for a period of six to 12 months" in the event of such a refusal, it was held that a defendant is not entitled to a warning which tracks the exact language of the implied consent statute, and the contention that the alleged misinformation prevented the defendant from making an intelligent choice strained credulity. *Pryor v. State*, 182 Ga. App. 79, 354 S.E.2d 690 (1987).

Notice of suspension. — Legislature intended to effectuate suspension or revocation of a driver's license automatically upon a conviction for driving under the influence (DUI), the notice to the defendant being the trial for violation of O.C.G.A. § 40-6-391 (DUI); i.e., notice "by operation of law." *Hale v. State*, 188 Ga. App. 524, 373 S.E.2d 250, cert. denied, 188 Ga. App. 911, 373 S.E.2d 250 (1988).

In a prosecution for driving with a sus-

pended license, without the defendant's agreement to stipulate to the defendant's convictions for driving under the influence (DUI), there was no recourse other than to admit the defendant's entire driving violations record to establish notice under O.C.G.A. § 40-5-63(a). A mere showing of the defendant's suspended status, without proof of the DUI violations, would have been insufficient. *Hale v. State*, 188 Ga. App. 524, 373 S.E.2d 250, cert. denied, 188 Ga. App. 911, 373 S.E.2d 250 (1988).

Subsection (a) of O.C.G.A. § 40-5-63 effectuates suspension or revocation of a driver's license automatically upon a conviction for driving under the influence, the notice of suspension being the trial for the driving offense under O.C.G.A. § 40-6-391. *Eppinger v. State*, 236 Ga. App. 426, 512 S.E.2d 320 (1999).

Defendant's driver's license was properly suspended after the defendant pled guilty to and received sentences as a first offender for two counts of homicide by vehicle in the first degree and one count of driving with ability impaired by alcohol. *Salomon v. Earp*, 190 Ga. App. 405, 379 S.E.2d 217 (1989), overruled on other grounds, *Pender v. Witcher*, 196 Ga. App. 856, 397 S.E.2d 193 (1990).

Under the plain language of O.C.G.A. § 40-5-63(a), because the underlying DUI convictions pursuant to O.C.G.A. § 40-6-391 did not have to result from separate arrests or separate and isolated incidents, the Department of Driver Services could suspend a driver's license based upon two separate DUI convictions resulting from a single incident. *Dozier v. Jackson*, 282 Ga. App. 264, 638 S.E.2d 337 (2006).

Probation condition requiring court permission to drive. — Condition of probation requiring the defendant to seek the court's permission to drive was within the requisite statutory parameters. *Durrance v. State*, 319 Ga. App. 866, 738 S.E.2d 692 (2013).

Effect of premature issuance. — Premature issuance of a driver's license to the defendant was not adequate to show as a matter of law that the defendant's driving privileges had been properly reinstated, nor did that premature issuance refute the evidence that the defendant drove a motor vehicle on a public highway at a time when the defendant's privilege to do so was suspended and before having the defendant's license reinstated when and as permitted by statutory procedure. *Payne v. State*, 209 Ga. App. 780, 434 S.E.2d 543 (1993); *Grisson v. State*, 237 Ga. App. 559, 515 S.E.2d 857 (1999).

Habitual violator and general nolo contendere provisions concurrently effective. — O.C.G.A. § 17-7-95 referred generally to the effects of pleas of nolo contendere as compared with pleas of guilty and makes no reference to the suspension of licenses. Since paragraph (a)(2) of former Code 1933, § 68B-312 referred not to crimes generally, but only to the specific offenses of driving under the influence of alcohol or drugs, the two sections have concurrent efficacy. *Howe v. Cofer*, 144 Ga. App. 589, 241 S.E.2d 472 (1978) (decided prior to 1983 amendment which rewrote provisions relating to effect of accepted pleas of nolo contendere; see O.C.G.A. § 40-5-63).

When nolo contendere plea considered conviction. — Nolo contendere plea will be considered to be a conviction when there has been another conviction or accepted plea within the statutory

five-year period. *Howe v. Cofer*, 144 Ga. App. 589, 241 S.E.2d 472 (1978) (decided prior to 1983 amendment which rewrote provisions relating to effect of accepted pleas of nolo contendere).

Language of paragraph (a)(3) of former Code 1933, § 68B-312 permitted the department to rely upon a nolo contendere accepted prior to the effective date of former Code 1933, § 68B-308 as a conviction in classifying a person as a habitual violator. *Cofer v. Crowell*, 146 Ga. App. 639, 247 S.E.2d 152 (1978) (decided prior to 1983 amendment which rewrote provisions relating to effect of accepted pleas of nolo contendere; see O.C.G.A. § 40-5-63).

Habitual violator provision not ex post facto. — Habitual violator provision which considers offenses occurring before provision's enactment is not ex post facto. The repetition of the criminal conduct aggravates the offender's guilt and justifies heavier penalties when the offender is again convicted, and the penalty is imposed for a new crime only, but is heavier if the offender is a habitual violator. The increased penalty is for the latest crime, which is considered to be an aggravated offense because it is repetitive. *Cofer v. Crowell*, 146 Ga. App. 639, 247 S.E.2d 152 (1978) (decided prior to 1983 amendment which rewrote provisions relating to effect of accepted pleas of nolo contendere).

Mistaken suspension. — Since the defendant's license suspension under O.C.G.A. § 40-5-63 was an ancillary result of the erroneous filing of the conviction papers, the suspension was not punishment within the meaning of the bar against double jeopardy. *Locklear v. State*, 244 Ga. App. 10, 534 S.E.2d 575 (2000).

Officers knowledge of driver's DUI as probable cause for stop. — Assuming arguendo that the defendant's license was suspended for only 120 days, and the defendant did not have to wait to reapply for reinstatement for 180 days under O.C.G.A. §§ 40-5-63 and 40-5-75, the defendant was pulled over and arrested 122 days after the suspension, which was the first business day on which the defendant could have applied for reinstatement under § 40-5-63(a)(1), and based on that timeline, it was reasonable for the officers to believe the defendant had not yet ap-

plied for reinstatement, especially in light of the fact that the officers knew the defendant had not even appeared for the DUI hearing that caused the suspension, thus, the suspended license provided a valid basis for the traffic stop. *United*

States v. Woods, No. 09-15555, 2010 U.S. App. LEXIS 13642 (11th Cir. July 2, 2010) (Unpublished).

Cited in *Kimbrell v. State*, 164 Ga. App. 344, 296 S.E.2d 206 (1982); *Hale v. State*, 188 Ga. App. 524, 373 S.E.2d 250 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 40-5-70 are included in the annotations for this Code section.

Application for limited permit. — Driver may not apply for limited permit when driver's license was revoked under paragraph (a)(3) of former Code 1933, § 68B-312. 1977 Op. Att'y Gen. No. 77-54 (see O.C.G.A. § 40-5-63).

Age as affecting when accepted plea of nolo contendere considered conviction. — Under O.C.G.A. § 40-5-63, which provides for the suspension of the driver's license of any person convicted of a violation of O.C.G.A. § 40-6-391, an accepted plea of nolo contendere tendered by an individual 18

years of age or older who has no previous conviction on these charges within the previous five years is not to be considered a conviction; however, an accepted plea of nolo contendere tendered by a person less than 18 years of age is to be considered a conviction. 1986 Op. Att'y Gen. U86-20 (rendered under former § 40-5-70).

When an individual is less than 18 years of age at the time of arrest but is more than 18 years of age at the time the individual tenders a plea of nolo contendere, the plea is still considered as one tendered by a person less than 18 years of age, and therefore constitutes a conviction. 1986 Op. Att'y Gen. No. U86-20 (rendered under former § 40-5-70).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 159.

C.J.S. — 60 C.J.S., Motor Vehicles, § 459.

ALR. — Statute providing for judicial

review of administrative order revoking or suspending automobile driver's license as providing for trial de novo, 97 ALR2d 1367.

40-5-63.1. Clinical evaluation and substance abuse treatment programs for certain offenders.

In addition to any and all other conditions of license reinstatement, issuance, or restoration under Code Section 40-5-57.1, 40-5-58, 40-5-62, or 40-5-63, any person with two or more convictions for violating Code Section 40-6-391 within ten years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be required to undergo a clinical evaluation and, if recommended as a part of such evaluation, shall complete a substance abuse treatment program prior to such license reinstatement, issuance, or restoration; provided, however, that such evaluation and treatment shall be at such person's expense except as otherwise provided by Code Section 37-7-120. Acceptable proof of completion of such a program shall be submitted to the

department prior to license reinstatement, issuance, or restoration. For purposes of this Code section, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere within ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions. (Code 1981, § 40-5-63.1, enacted by Ga. L. 1997, p. 760, § 17; Ga. L. 2000, p. 951, § 5-26; Ga. L. 2000, p. 1457, § 3; Ga. L. 2008, p. 498, § 1/HB 336; Ga. L. 2012, p. 72, § 4/SB 236.)

The 2012 amendment, effective January 1, 2013, inserted “40-5-57.1,” in the first sentence.

Cross references. — Board of Behavioral Health and Development Disabilities rules and regulations, § 37-7-2. DUI Alcohol or Drug Use Risk Reduction Programs, § 40-5-80 et seq.

Editor’s notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Teen-age and Adult Driver Responsibility Act’.”

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 2008, p. 498, § 5/HB 336, not codified by the General Assembly, pro-

vides, in part, that the amendment to this Code section shall be applied to offenses occurring on or after July 1, 2008; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (c) of Code Section 40-6-391, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after July 1, 2008, shall be considered.

Administrative rules and regulations. — Clinical Evaluation and Substance Abuse Treatment for DUI Offenders, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Mental Health, Developmental Disabilities, and Addictive Diseases, Chapter 290-4-13.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

40-5-64. Limited driving permits for certain offenders.

(a) To whom issued.

(1) Notwithstanding any contrary provision of Code Section 40-5-57 or 40-5-63 or any other Code section of this chapter, any person who has not been previously convicted or adjudicated delinquent for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, may apply for a limited driving permit when and only when that person’s driver’s license has been suspended in accordance with paragraph (2) of subsection (a.1) of Code Section 40-5-22, subsection (d) of Code Section 40-5-57, paragraph (1) of subsection (a) of Code Section 40-5-63, paragraph (1) of subsection (a) of Code Section 40-5-67.2, or subsection (a) of Code Section 40-5-57.1,

when the person is 18 years of age or older and his or her license was suspended for exceeding the speed limit by 24 miles per hour or more but less than 34 miles per hour, and the sentencing judge, in his or her discretion, decides it is reasonable to issue a limited driving permit.

(2) Any person whose driver's license has been suspended as a result of a second conviction for violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, may apply for an ignition interlock limited driving permit after serving at least 120 days of the suspension required for such conviction and providing either a certificate of eligibility from a drug court program in the court in which he or she was convicted of the offense for which such suspension was imposed or by submitting proof of enrollment in clinical treatment as provided in Code Section 40-5-63.1. No person who has been granted an exemption from the ignition interlock device requirements of Article 7 of Chapter 8 of Title 42 shall be eligible for a limited driving permit or any other driving privilege for a period of one year.

(3) To the extent a person is subject to more than one suspension for which a permit may be issued, the department shall not issue such permit unless the suspensions are for a conviction for driving under the influence in violation of Code Section 40-6-391 imposed pursuant to Code Section 40-5-63 and an administrative suspension imposed pursuant to paragraph (1) of subsection (a) of Code Section 40-5-67.2 arising from the same incident.

(b) **Application form.** Applications for limited driving permits shall be made upon such forms as the commissioner may prescribe. Such forms shall require such information as is necessary for the department to determine the need for such permit. All applications shall be signed by the applicant before a person authorized to administer oaths.

(c) **Standards for approval.** The department shall issue a limited driving permit if the application indicates that refusal to issue such permit would cause extreme hardship to the applicant. Except as otherwise provided by subsection (c.1) of this Code section, for the purposes of this Code section, "extreme hardship" means that the applicant cannot reasonably obtain other transportation, and therefore the applicant would be prohibited from:

- (1) Going to his or her place of employment;
- (2) Receiving scheduled medical care or obtaining prescription drugs;
- (3) Attending a college or school at which he or she is regularly enrolled as a student;

(4) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner;

(5) Attending under court order any driver education or improvement school or alcohol or drug program or course approved by the court which entered the judgment of conviction resulting in suspension of his or her driver's license or by the commissioner;

(6) Attending court, reporting to a probation office or officer, or performing community service; or

(7) Transporting an immediate family member who does not hold a valid driver's license for work, medical care, or prescriptions or to school.

(c.1) Exception to standards for approval.

(1) The provisions of paragraphs (2), (3), (4), and (5) of subsection (c) of this Code section shall not apply and shall not be considered for purposes of granting a limited driving permit or imposing conditions thereon under this Code section in the case of a driver's license suspension under paragraph (2) of subsection (a.1) of Code Section 40-5-22.

(2) An ignition interlock device limited driving permit shall be restricted to allow the holder thereof to drive solely for the following purposes:

(A) Going to his or her place of employment;

(B) Attending a college or school at which he or she is regularly enrolled as a student;

(C) Attending regularly scheduled sessions or meetings of treatment support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner; and

(D) Going for monthly monitoring visits with the permit holder's ignition interlock device service provider.

(d) **Conditions attached.** A limited driving permit shall be endorsed with such conditions as the commissioner deems necessary to ensure that such permit will be used by the permittee only to avoid the conditions of extreme hardship. Such conditions may include the following restrictions:

(1) Specific places between which the permittee may be allowed to operate a motor vehicle;

- (2) Routes to be followed by the permittee;
- (3) Times of travel;
- (4) The specific vehicles which the permittee may operate;

(4.1) The installation and use of an ignition interlock device in accordance with Article 7 of Chapter 8 of Title 42, which shall be required for any permittee who is applying for an ignition interlock limited driving permit; and

- (5) Such other restrictions as the department may require.

(e) Fees, duration, renewal, and replacement of permit.

(1) A permit issued pursuant to this Code section shall be \$25.00 and shall become invalid upon the driver's eighteenth birthday in the case of a suspension under paragraph (2) of subsection (a.1) of Code Section 40-5-22, upon the expiration of one year following issuance thereof in the case of a suspension for an offense listed in Code Section 40-5-54 or a suspension under Code Section 40-5-57 or a suspension in accordance with paragraph (1) of subsection (a) of Code Section 40-5-63 for a violation of Code Section 40-6-391, or upon the expiration of 30 days in the case of an administrative license suspension in accordance with paragraph (1) of subsection (a) of Code Section 40-5-67.2; except that such limited driving permit shall expire upon any earlier reinstatement of the driver's license. A person may apply to the department for a limited driving permit immediately following such conviction if he or she has surrendered his or her driver's license to the court in which the conviction was adjudged or to the department if the department has processed the citation or conviction. Upon the applicant's execution of an affidavit attesting to such facts and to the fact that the court had not imposed a suspension or revocation of his or her driver's license or driving privileges inconsistent with the driving privileges to be conferred by the limited driving permit applied for, the department may issue such person a limited driving permit. Permits issued pursuant to this Code section are renewable upon payment of a renewal fee of \$5.00. Permits may be renewed until the person has his or her license reinstated for the violation that was the basis of the issuance of the permit. Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be issued a replacement for a lost or destroyed limited driving permit issued to him or her.

(2) An ignition interlock device limited driving permit shall be valid for a period of one year. Upon successful completion of one year of monitoring of such ignition interlock device, the restriction for maintaining and using such ignition interlock device shall be re-

moved, and the permit may be renewed for additional periods of two months as provided in paragraph (1) of this subsection.

(f) **Liability of issuing officer.** No official or employee of the department shall be criminally or civilly liable or subject to being held in contempt of court for issuing a limited driving permit in reliance on the truth of the affidavits required by this Code section.

(g) **Revocation of permit.**

(1)(A) Any permittee who is convicted of violating any state law or local ordinance relating to the movement of vehicles or any permittee who is convicted of violating the conditions endorsed on his or her permit shall have his or her permit revoked by the department. Any court in which such conviction is had shall require the permittee to surrender the permit to the court, and the court shall forward it to the department within ten days after the conviction, with a copy of the conviction.

(B) Upon receipt of notice from the Department of Behavioral Health and Developmental Disabilities that a permittee who is required to complete a substance abuse treatment program pursuant to Code Section 40-5-63.1 enrolled in but failed to attend or complete such program as scheduled, the department shall revoke such person's limited driving permit and, by regular mail to his or her last known address, notify such person of such revocation. Such notice of revocation shall inform the person of the grounds for and effective date of the revocation and of the right to review. The notice of revocation shall be deemed received three days after mailing.

(C) Upon receipt of notice from a provider center for ignition interlock devices that an ignition interlock device which a permittee is required to use has been tampered with or the permittee has failed to report for monitoring of such device as required by law, the department shall revoke such permittee's limited driving permit and, by regular mail to his or her last known address, notify such person of such revocation. Such notice of revocation shall inform the person of the grounds for and effective date of the revocation and of the right to review. The notice of revocation shall be deemed received three days after mailing.

(2) Any person whose limited driving permit has been revoked shall not be eligible to apply for a driver's license until six months from the date such permit was surrendered to the department. In any case of revocation of a limited driving permit pursuant to subparagraph (A) of paragraph (1) of this subsection, the department may impose an additional period of suspension for the conviction upon which revocation of the permit was based.

(h) **Hearings.** Any person whose permit has been revoked or who has been refused a permit by the department may make a request in

writing for a hearing to be provided by the department. Such hearing shall be provided by the department within 30 days after the receipt of such request and shall follow the procedures required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Appeal from such hearing shall be in accordance with said chapter.

(i) **Rules and regulations.** The commissioner may promulgate such rules and regulations as are necessary to implement this Code section.

(j) **Penalty.** Any permittee who operates a motor vehicle in violation of any condition specified on the permit shall be guilty of a misdemeanor. (Code 1933, § 68B-311, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1977, p. 648, § 1; Ga. L. 1978, p. 225, § 3; Ga. L. 1983, p. 1000, § 7; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 9; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 21; Ga. L. 1992, p. 2564, § 3; Ga. L. 1992, p. 2785, § 11; Ga. L. 1994, p. 1600, § 1; Ga. L. 1997, p. 760, § 18; Ga. L. 1999, p. 391, § 5; Ga. L. 2000, p. 951, § 5-27; Ga. L. 2000, p. 1457, § 4; Ga. L. 2002, p. 1324, § 1-20; Ga. L. 2003, p. 796, § 1; Ga. L. 2004, p. 471, § 6; Ga. L. 2006, p. 449, § 10/HB 1253; Ga. L. 2008, p. 171, § 7/HB 1111; Ga. L. 2009, p. 453, § 3-4/HB 228; Ga. L. 2010, p. 199, § 3/HB 258; Ga. L. 2010, p. 932, § 14/HB 396; Ga. L. 2011, p. 355, § 8/HB 269; Ga. L. 2012, p. 72, § 5/SB 236; Ga. L. 2013, p. 878, § 2/HB 407.)

The 2012 amendment, effective January 1, 2013, substituted "18 years of age or older" for "18 or over" near the end of paragraph (a)(1); substituted the present provisions of paragraph (a)(2) for the former provisions, which read: "Any person whose driver's license has been suspended and who is subject to a court order for installation and use of an ignition interlock device as a condition of probation pursuant to the provisions Article 7 of Chapter 8 of Title 42 may apply for a limited driving permit."; deleted "or performing the normal duties of his or her occupation" following "of employment" at the end of paragraph (c)(1); deleted "or" at the end of paragraph (c)(4); substituted a semicolon for a period at the end of paragraph (c)(5); added paragraphs (c)(6) and (c)(7); designated the existing provisions of subsection (c.1) as paragraph (c.1)(1); added paragraph (c.1)(2); designated the existing provisions of subsection (e) as paragraph (e)(1); in paragraph (e)(1), in the first sentence, deleted a comma following "Code Section 40-5-57", inserted "or", and deleted ", or upon the expiration of six months following proof of installation of

an ignition interlock device in the case of a limited driving permit issued to a person subject to a court order for installation and use of such a device pursuant to Article 7 of Chapter 8 of Title 42" following "Code Section 40-5-67.2"; and added paragraph (e)(2).

The 2013 amendment, effective July 1, 2013, in paragraph (a)(2), in the first sentence, substituted "apply for an ignition interlock" for "apply for a", inserted "either" near the middle, inserted "by submitting" near the end, and added the second sentence; in paragraph (e)(2), substituted "one year" for "eight months" in the first and second sentences, and substituted "two months" for "six months" near the end of the second sentence. See editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "adjudged or to the department if" was substituted for "adjudged, to the department, or if" near the end of the second sentence in subsection (e).

Editor's notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act

shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act

shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1999, p. 391, § 2, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Heidi's Law.'"

Ga. L. 2013, p. 878, § 5/HB 407, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses committed on or after such date."

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992). For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 200 (1999).

JUDICIAL DECISIONS

Habitual violator provision not unconstitutional. — Fact that the offenses which serve to disqualify the person as a first offender occurred prior to the enactment of the habitual offender provision does not serve to give such a provision an

unconstitutional or illegal retroactive effect. *Cofer v. Fielden*, 145 Ga. App. 251, 243 S.E.2d 670 (1978).

Cited in *Hardison v. Popham*, 151 Ga. App. 143, 259 S.E.2d 149 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Applicability. — Language of former Code 1933, § 68B-311 (see O.C.G.A. § 40-5-64) clearly indicated that only drivers who were convicted of driving under the influence of drugs or alcohol or drivers whose licenses were suspended due to the accumulation of 15 traffic violations points may apply for limited permits. 1977 Op. Att'y Gen. No. 77-54 (decided prior to 1983 amendment which deleted the provision for limited permits for persons convicted of driving under the influence).

Standard for issuing limited permits. — In issuing limited permits, the standard which should be followed was set out in former Code 1933, § 68B-311. 1977 Op. Att'y Gen. No. 77-54 (see O.C.G.A. § 40-5-64).

Issuance when refusal causes "ex-

treme hardship." — Language of subsection (c) of former Code 1933, § 68B-311 indicated that the department must issue a limited permit when an application for such a permit indicated that refusal to issue the permit would cause "extreme hardship;" while the department cannot refuse to issue limited permits to applicants who qualify for such permits, the department had considerable discretion to prescribe the conditions under which the permits may be used. 1977 Op. Att'y Gen. No. 77-54 (see O.C.G.A. § 40-5-64).

No limited permit available. — Driver may not apply for limited permit when license was revoked under former Code 1933, § 68B-312. 1977 Op. Att'y Gen. No. 77-54 (see O.C.G.A. § 40-5-63(a)(3)).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 459.

40-5-65. Restriction as to operation under foreign license during period of revocation or suspension.

Any resident or nonresident whose driver's license or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license or permit issued by any other jurisdiction or otherwise during such suspension or after such revocation until the license is restored when and as permitted under this chapter. (Code 1933, § 68B-314, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.)

JUDICIAL DECISIONS

Legal operation of vehicle by one whose license was revoked. — Regardless of possession of a driver's license from any other state, one who has had one's Georgia driver's license revoked by the Department of Public Safety can legally thereafter operate a vehicle in Georgia only if the Department reauthorizes that person to do so. *Goblet v. State*, 174 Ga. App. 675, 331 S.E.2d 56 (1985).

One who has been properly notified that one has been declared a habitual violator by this state can thereafter lose that status and drive in Georgia only after the passage of five years and, pursuant to that person's application, the Department of Public Safety has determined that it will be safe to grant the person the privilege of driving a motor vehicle on the public highways. *Goblet v. State*, 174 Ga. App. 675, 331 S.E.2d 56 (1985).

An individual may not avoid prosecution for operating a motor vehicle in this state after having been declared a habitual violator by obtaining a valid license from another state. *Tootle v. State*, 203 Ga. App. 497, 417 S.E.2d 433 (1992).

Effect of premature issuance. — Premature issuance of a driver's license to

the defendant was not adequate to show as a matter of law that the defendant's driving privileges had been properly reinstated, nor did that premature issuance refute the evidence that the defendant drove a motor vehicle on a public highway at a time when the defendant's privilege to do so was suspended and before having the defendant's license reinstated when and as permitted by statutory procedure. *Payne v. State*, 209 Ga. App. 780, 434 S.E.2d 543 (1993); *Grisson v. State*, 237 Ga. App. 559, 515 S.E.2d 857 (1999).

Possession of Florida license not a defense. — Under O.C.G.A. § 40-5-65, possession of a valid license from another state was not a defense to a habitual violator charge and created no presumption that the defendant was authorized to drive in Georgia; since the defendant testified that the defendant never inquired about reinstating the defendant's Georgia driving privileges, the evidence supported the defendant's habitual violator conviction. *Stripling v. State*, 279 Ga. App. 856, 632 S.E.2d 747 (2006).

Cited in *Parks v. State*, 180 Ga. App. 31, 348 S.E.2d 481 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 111.

C.J.S. — 60 C.J.S., Motor Vehicles, § 328 et seq.

ALR. — Constitutionality and construction of statutes with respect to non-resident motor vehicle operators' or drivers' licenses, 82 ALR 1392

40-5-66. Appeals from decisions of department.

(a) Except as provided in subsection (h) of Code Section 40-5-67.1 and subsection (h) of Code Section 40-5-64, any decision rendered by the department shall be final unless the aggrieved person shall desire an appeal. In such case, such person shall have the right to enter an appeal in the superior court of the county of his residence or in the Superior Court of Fulton County. Such appeal shall name the commissioner as defendant and must be filed within 30 days from the date the department enters its decision or order. The person filing the appeal shall not be required to post any bond nor to pay the costs in advance.

(b) If the person so desires, the appeal may be heard by the judge at term or in chambers or by a jury at the first term. The hearing on the appeal shall be de novo, but no appeal shall act as a supersedeas of any orders or acts of the department. No person shall be allowed to operate any vehicle in violation of any suspension or revocation by the department while any such appeal is pending. (Ga. L. 1937, p. 322, art. 4, § 11; Ga. L. 1943, p. 196, § 5; Ga. L. 1951, p. 598, § 8; Code 1933, § 68B-315, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 4.)

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

Due process. — Right to appeal to the state court system under O.C.G.A. § 40-5-66 from a driver's license revocation does not rectify the procedural due process flaws inherent in the revocation hearing procedures because that section does not afford a prerevocation hearing. *Smith v. Commissioner of Ga. Dep't of Pub. Safety*, 673 F. Supp. 446 (M.D. Ga. 1987).

Jurisdiction to determine habitual violator status. — Because an administrative law judge lacked jurisdiction to address the issue of a driver's habitual violator status, and thus, the ruling that the driver was wrongfully declared an habitual offender was not binding on the parties, the driver was not entitled to mandamus relief ordering the Commissioner of the Department of Driver Ser-

vices to issue a driver's license. *James v. Davis*, 280 Ga. 497, 629 S.E.2d 820 (2006).

Hearing required unless waived. — Although the superior court is not required to conduct a hearing concerning the merits of the Department of Public Safety's decision to revoke the driver's license of an aggrieved party if the parties waive the parties' right to be heard, the superior court cannot avoid the dictates of O.C.G.A. §§ 5-3-29 and 9-10-2 by simply failing to hold a hearing. *Bowman v. Parrot*, 200 Ga. App. 405, 408 S.E.2d 115, cert. denied, 200 Ga. App. 895, 408 S.E.2d 115 (1991).

Appeal to department does not affect appeal rights to superior court. — Even though defendant elected to first pursue an administrative appeal of a driver's license suspension to the Department of Public Safety, and was unsuccessful in

that effort, the defendant was still entitled to file an appeal in the superior court under O.C.G.A. § 40-5-66, at which the defendant could receive a meaningful hearing upon request and, accordingly, the defendant was not denied the right to procedural due process. *Miles v. Shaw*, 272 Ga. 475, 532 S.E.2d 373 (2000).

Standard of review. — It was error to affirm a decision to suspend a driver's license when, after being advised of the implied consent rights and of the consequences of refusing to submit to a state-administered breath test, the driver refused the test; as the correct standard of review was the "any evidence" test, because the hearing before the ALJ was conducted pursuant to O.C.G.A. § 40-5-67.1, the appeal in the superior court was expressly excepted from O.C.G.A. § 40-5-66(a), and had to be conducted pursuant to O.C.G.A. § 40-5-67.1(h); moreover, the administered breath tests were not invalid merely because the officer gave the breath tests ten minutes apart, and the driver's failure to give an adequate sample could not be

used to suspend the license. *Dozier v. Pierce*, 279 Ga. App. 464, 631 S.E.2d 379 (2006).

Untimely appeal warranted dismissal. — Trial court erred in denying a motion by the Georgia Department of Public Safety (DPS) to dismiss a motorist's petition for judicial review of a decision by the DPS which denied the motorist's application for reinstatement of the motorist's driver's license as the petition for judicial review was not filed within 30 days from the date that the DPS entered its decision as required under O.C.G.A. § 40-5-66(a). *Hightower v. Cervantes*, 259 Ga. App. 562, 578 S.E.2d 240 (2003).

Cited in *Cofe v. Crowell*, 146 Ga. App. 639, 247 S.E.2d 152 (1978); *Akin v. Hardison*, 245 Ga. 57, 262 S.E.2d 814 (1980); *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980); *Hardison v. Haslam*, 250 Ga. 59, 295 S.E.2d 830 (1982); *Hardison v. Martin*, 254 Ga. 719, 334 S.E.2d 161 (1985); *Earp v. Angel*, 182 Ga. App. 860, 357 S.E.2d 596 (1987); *Wells v. State*, 212 Ga. App. 15, 440 S.E.2d 692 (1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 107, 154 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 433 et seq.

ALR. — Suspension or revocation of

driver's license for refusal to take sobriety test, 88 ALR2d 1064.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo, 97 ALR2d 1367.

40-5-67. Seizure and disposition of driver's license of persons charged with driving under the influence; issuance of temporary driving permit; disposition of cases.

(a) Whenever any resident or nonresident person is charged with violating Code Section 40-6-391, the law enforcement officer shall take the driver's license of the person so charged. The driver's license shall be attached to the court's copy of the uniform traffic citation and complaint form and shall be forwarded to the court having jurisdiction of the offense. A copy of the uniform traffic citation and complaint form shall be forwarded, within ten days of issue, to the department. Taking the driver's license as required in this Code section shall not prohibit any law enforcement officer or agency from requiring any cash bond authorized by Article 1 of Chapter 6 of Title 17.

(b) At the time the law enforcement officer takes the driver's license, the officer shall issue a temporary driving permit to the person as follows:

(1) If the driver refuses to submit to a test or tests to determine the presence of alcohol or drugs as required in Code Section 40-5-55, the officer shall issue a 30 day temporary driving permit;

(2) If the driver's license is required to be suspended under Code Section 40-5-67.1, the officer shall issue a 30 day temporary driving permit; or

(3) If the test or tests administered pursuant to Code Section 40-5-55 indicate an alcohol concentration in violation of Code Section 40-6-391 but less than the level for an administrative suspension of the license under subsection (c) of Code Section 40-5-67.1, the officer shall issue a 180 day temporary driving permit.

This temporary driving permit shall be valid for the stated period or until the person's driving privilege is suspended or revoked under any provision of this title. The department, at its sole discretion, may delay the expiration date of the temporary driving permit, but in no event shall this delay extend beyond the date when such person's driving privilege is suspended or revoked under any provision of this title. The department shall by rules and regulations establish the conditions under which the expiration of the temporary permit may be delayed.

(c)(1) If the person is convicted of violating or enters a plea of nolo contendere to a charge of violating Code Section 40-6-391, the court shall, within ten days, forward the person's driver's license and the record of the disposition of the case to the department. At this time, the court shall also require the person to surrender the temporary driving permit issued pursuant to subsection (b) of this Code section.

(2) If the person is not convicted of violating and does not enter a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the court is in possession of the driver's license, the court shall return the driver's license to the person unless the license is in suspension for any other offense, in which case the court shall forward the license to the department for disposition. (Code 1981, § 40-5-69, enacted by Ga. L. 1983, p. 1000, § 1; Code 1981, § 40-5-67, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 5; Ga. L. 1994, p. 1600, § 2; Ga. L. 1997, p. 760, § 19; Ga. L. 2000, p. 951, § 5-28.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "or" was added at the end of paragraph (b)(2).

Editor's notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assem-

bly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1,

restricting the acceptance of a plea of *nolo contendere* to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992). For note, "Rodriguez v. State: Addressing Georgia's Implied Consent Requirements for Non-English-Speaking Drivers," see 54 Mercer L. Rev. 1253 (2003).

JUDICIAL DECISIONS

Double jeopardy. — Suspension of a driver's license at an administrative hearing is not punishment, nor is the hearing a prosecution for the purposes of double jeopardy. *Kirkpatrick v. State*, 219 Ga. App. 307, 464 S.E.2d 882 (1995).

Equal protection claims. — Defendant's constitutional claims to the implied consent statutes were without merit since the defendant, a Spanish speaking person, was not similarly situated to a hearing impaired person and, although similarly situated to an English speaking person, there was a rational basis for requiring the implied consent warnings to be read in English. *Rodriguez v. State*, 275 Ga. 283, 565 S.E.2d 458 (2002).

DUI arrestee had no standing to challenge administrative suspension procedure. — Plaintiff, whose license was confiscated by an officer at the time of arrest for DUI and who was issued a citation allowing the plaintiff to drive pending resolution of the plaintiff's case, did not have standing to challenge the administrative suspension procedures es-

tablished by O.C.G.A. § 40-5-67.1. *McGraw v. State*, 230 Ga. App. 843, 498 S.E.2d 314 (1998).

Duty of court to seize license and temporary permit pending appeal. — Upon conviction for driving under the influence, the defendant was properly required to surrender the defendant's driver's license and temporary permit to the trial court pending appeal; the seizure and forwarding of the license to the Department of Public Safety was not part of the defendant's sentence or a condition of the defendant's bond but a requirement imposed by statute on the court. *Wells v. State*, 212 Ga. App. 15, 440 S.E.2d 692 (1994).

Due process was not violated by the failure to return the defendant's plastic license following a license suspension hearing which was resolved in defendant's favor since the rationale for confiscation of the license in the first place was a pending charge under O.C.G.A. § 40-6-391. *Wright v. State*, 228 Ga. App. 717, 492 S.E.2d 581 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code Section 40-5-69, which

was renumbered as Code Section 40-5-67 by Ga. L. 1990, p. 2048, § 4, are included in the annotations for this Code section.

Nonresident convicted of driving under the influence. — Georgia law requires that, when a non-resident is convicted of driving under the influence, the court forward the non-resident's driver's license to the Georgia Department of Public Safety with the license to be forwarded to the non-resident's home state along with the record of conviction and record of any action taken by the Department of Public Safety. 1986 Op. Att'y Gen. No. U86-15 (decided under former § 40-5-69).

Georgia law requires that, when a non-resident person is charged with driving under the influence, the arresting officer is to take the driver's license, attach the license to the court's copy of the citation, and forward the license to the appropriate court as would be done with a Georgia driver. 1986 Op. Att'y Gen. No. U86-16 (decided under former § 40-5-69).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Defense to Charge of Driving Under the Influence of Alcohol, 17 POF3d 1.

Negligent Failure to Detain Intoxicated Motorist, 1 POF3d 545.

Proof and Disproof of Alcohol-Induced

Driving Impairment Through Breath Alcohol Testing, 4 POF3d 229.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 POF3d 459.

40-5-67.1. Chemical tests; implied consent notices; rights of motorists; test results; refusal to submit; suspension or denial; hearing and review; compensation of officers; inspection and certification of breath-testing instruments.

(a) The test or tests required under Code Section 40-5-55 shall be administered as soon as possible at the request of a law enforcement officer having reasonable grounds to believe that the person has been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 and the officer has arrested such person for a violation of Code Section 40-6-391, any federal law in conformity with Code Section 40-6-391, or any local ordinance which adopts Code Section 40-6-391 by reference or the person has been involved in a traffic accident resulting in serious injuries or fatalities. Subject to Code Section 40-6-392, the requesting law enforcement officer shall designate which test or tests shall be administered initially and may subsequently require a test or tests of any substances not initially tested.

(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent notice from the following:

(1) Implied consent notice for suspects under age 21:

"Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the

influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.02 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"

(2) Implied consent notice for suspects age 21 or over:

"Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"

(3) Implied consent notice for commercial motor vehicle driver suspects:

"Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate the presence of any alcohol, you will be issued an out-of-service order and will be prohibited from operating a motor vehicle for 24 hours. If the

results indicate an alcohol concentration of 0.04 grams or more, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"

If any such notice is used by a law enforcement officer to advise a person of his or her rights regarding the administration of chemical testing, such person shall be deemed to have been properly advised of his or her rights under this Code section and under Code Section 40-6-392 and the results of any chemical test, or the refusal to submit to a test, shall be admitted into evidence against such person. Such notice shall be read in its entirety but need not be read exactly so long as the substance of the notice remains unchanged.

(c) If a person under arrest or a person who was involved in any traffic accident resulting in serious injuries or fatalities submits to a chemical test upon the request of a law enforcement officer and the test results indicate that a suspension or disqualification is required under this Code section, the results shall be reported to the department. Upon the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 or that such person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state and was involved in a traffic accident involving serious injuries or fatalities and that the person submitted to a chemical test at the request of the law enforcement officer and the test results indicate either an alcohol concentration of 0.08 grams or more or, for a person under the age of 21, an alcohol concentration of 0.02 grams or more, the department shall suspend the person's driver's license, permit, or nonresident operating privilege pursuant to Code Section 40-5-67.2, subject to review as provided for in this chapter. Upon the receipt of a report of the law enforcement officer that the arrested person had been operating or was in actual physical control of a moving commercial motor vehicle and the test results indicate an alcohol concentration of 0.04 grams or more, the department shall disqualify the person from operating a motor vehicle for a minimum period of one year.

(d) If a person under arrest or a person who was involved in any traffic accident resulting in serious injuries or fatalities refuses, upon

the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (a) of this Code section, no test shall be given; but the law enforcement officer shall report the refusal to the department. Upon the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 or that such person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state and was involved in a traffic accident which resulted in serious injuries or fatalities and that the person had refused to submit to the test upon the request of the law enforcement officer, the department shall suspend the person's driver's license, permit, or nonresident operating privilege for a period of one year or if the person was operating or in actual physical control of a commercial motor vehicle, the department shall disqualify the person from operating a commercial motor vehicle and shall suspend the person's driver's license, permit, or nonresident operating privilege, subject to review as provided for in this chapter.

(d.1) Nothing in this Code section shall be deemed to preclude the acquisition or admission of evidence of a violation of Code Section 40-6-391 if obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States.

(e) If the person is a resident without a driver's license, commercial driver's license, or permit to operate a motor vehicle in this state, the department shall deny issuance of a license or permit to such person for the same period provided in subsection (c) or (d) of this Code section, whichever is applicable, for suspension of a license or permit or disqualification to operate a commercial motor vehicle subject to review as provided for in this chapter.

(f)(1) The law enforcement officer, acting on behalf of the department, shall personally serve the notice of intention to suspend or disqualify the license of the arrested person or other person refusing such test on such person at the time of the person's refusal to submit to a test or at the time at which such a test indicates that suspension or disqualification is required under this Code section. The law enforcement officer shall take possession of any driver's license or permit held by any person whose license is subject to suspension pursuant to subsection (c) or (d) of this Code section, if any, and shall issue a 30 day temporary permit. The officer shall forward the person's driver's license to the department along with the notice of intent to suspend or disqualify and the report required by subsection

(c) or (d) of this Code section within ten calendar days after the date of the arrest of such person. This paragraph shall not apply to any person issued a 180 day temporary permit pursuant to subsection (b) of Code Section 40-5-67. The failure of the officer to transmit the report required by this Code section within ten calendar days shall not prevent the department from accepting such report and utilizing it in the suspension of a driver's license as provided in this Code section.

(2) If notice has not been given by the arresting officer, the department, upon receipt of the report of such officer, shall suspend the person's driver's license, permit, or nonresident operating privilege or disqualify such person from operating a motor vehicle and, by regular mail, at the last known address, notify such person of such suspension or disqualification. The notice shall inform the person of the grounds of suspension or disqualification, the effective date of the suspension or disqualification, and the right to review. The notice shall be deemed received three days after mailing.

(g)(1) A person whose driver's license is suspended or who is disqualified from operating a commercial motor vehicle pursuant to this Code section shall remit to the department a \$150.00 filing fee together with a request, in writing, for a hearing within ten business days from the date of personal notice or receipt of notice sent by certified mail or statutory overnight delivery, return receipt requested, or the right to said hearing shall be deemed waived. Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing shall be recorded.

(2) The scope of the hearing shall be limited to the following issues:

(A)(i) Whether the law enforcement officer had reasonable grounds to believe the person was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating Code Section 40-6-391; or

(ii) Whether the person was involved in a motor vehicle accident or collision resulting in serious injury or fatality; and

(B) Whether at the time of the request for the test or tests the officer informed the person of the person's implied consent rights and the consequence of submitting or refusing to submit to such test; and

(C)(i) Whether the person refused the test; or

(ii) Whether a test or tests were administered and the results indicated an alcohol concentration of 0.08 grams or more or, for a

person under the age of 21, an alcohol concentration of 0.02 grams or more or, for a person operating or having actual physical control of a commercial motor vehicle, an alcohol concentration of 0.04 grams or more; and

(D) Whether the test or tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences or a test conducted by the Division of Forensic Sciences, including whether the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order, which shall be required. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results or, where the test is performed by the Division of Forensic Sciences, a copy of the crime lab report shall satisfy the requirements of this subparagraph.

(3) The hearing officer shall, within five calendar days after such hearing, forward a decision to the department to rescind or sustain the driver's license suspension or disqualification. If no hearing is requested within the ten business days specified above, and the failure to request such hearing is due in whole or in part to the reasonably avoidable fault of the person, the right to a hearing shall have been waived. The request for a hearing shall not stay the suspension of the driver's license; provided, however, that if the hearing is timely requested and is not held before the expiration of the temporary permit and the delay is not due in whole or in part to the reasonably avoidable fault of the person, the suspension shall be stayed until such time as the hearing is held and the hearing officer's decision is made.

(4) In the event the person is acquitted of a violation of Code Section 40-6-391 or such charge is initially disposed of other than by a conviction or plea of nolo contendere, then the suspension shall be terminated and deleted from the driver's license record. An accepted plea of nolo contendere shall be entered on the driver's license record and shall be considered and counted as a conviction for purposes of any future violations of Code Section 40-6-391. In the event of an acquittal or other disposition other than by a conviction or plea of nolo contendere, the driver's license restoration fee shall be promptly returned by the department to the licensee.

(h) If the suspension is sustained after such a hearing, the person whose license has been suspended under this Code section shall have a right to file for a judicial review of the department's final decision, as provided for in Chapter 13 of Title 50, the "Georgia Administrative

“This breath-testing instrument (serial no. _____) was thoroughly inspected, tested, and standardized by the undersigned on (date _____) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order.”

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (a) of Code Section 40-6-392 and subparagraph (g)(2)(F) of this Code section. (Code 1981, § 40-5-67.1, enacted by Ga. L. 1992, p. 2564, § 6; Ga. L. 1994, p. 472, § 1; Ga. L. 1994, p. 1600, § 3-6; Ga. L. 1995, p. 1160, §§ 1-3; Ga. L. 1995, Ex. Sess., p. 5, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 760, § 20; Ga. L. 1998, p. 210, § 2; Ga. L. 2000, p. 951, §§ 5-29—5-32; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 208, § 1-3; Ga. L. 2006, p. 329, § 2/HB 1275; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2010, p. 9, § 1-80/HB 1055; Ga. L. 2011, p. 355, § 9/HB 269.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, in paragraph (g)(1), “section” was substituted for “Section” and a comma was inserted following “requested”, and “subsection (g)” was substituted for “subsection (i)” in subsection (i).

Editor’s notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1995, p. 1160, § 5, not codified by the General Assembly, provides that the Act shall apply to all cases pending at the time of its approval by the Governor or its

becoming law without such approval, except that the provisions regarding the requirement for two breath samples set forth in subparagraph (a)(1)(B) of Code Section 40-6-392 shall not apply to arrests made prior to January 1, 1995. The Act was approved by the Governor on April 21, 1995.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Teen-age and Adult Driver Responsibility Act’.”

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and, except for subsection (b.1) of this Code section, shall not apply to offenses committed prior to that date.

Ga. L. 1998, p. 210, § 1, not codified by the General Assembly, provides: “The General Assembly finds and declares that persons driving motor vehicles on public roads while under the influence of alcohol or drugs or while having an unlawful alcohol concentration has been and remains a serious and deadly problem in this state and requires the diligent and utmost efforts of law enforcement officials to apprehend and prosecute persons committing such violations. The General As-

sembly further finds that a law enforcement officer should be allowed to initially require a combination of tests and should subsequently be allowed to require additional tests of any substance not initially tested. The General Assembly further finds and declares that while suspects in such cases should be informed of their rights regarding the administration of chemical testing, no such suspect is entitled to a notice which tracks the exact language of the implied consent statute, so long as the substance of the notice remains unchanged."

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997). For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

For note on 1992 enactment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992). For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 289 (1995). For note, "Rodriguez v. State: Addressing Georgia's Implied Consent Requirements for Non-English-Speaking Drivers," see 54 Mercer L. Rev. 1253 (2003).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

ADVISEMENT TO DRIVER OF RIGHTS

DRIVER INCAPABLE OF UNDERSTANDING RIGHTS

REFUSAL BY DRIVER TO SUBMIT TO TEST

DESIGNATION OF TEST BY ARRESTING OFFICER

PRACTICE AND PROCEDURE

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 68A-306, 68A-902.1, and Ga. L. 1968, p. 448 are included in the annotations for this Code section.

Constitutionality of implied consent notice. — Implied consent notice given to defendants pursuant to O.C.G.A. § 40-5-67.1 did not violate due process on the basis that the notice is incomplete, misleading, and coercive. *Klink v. State*, 272 Ga. 605, 533 S.E.2d 92 (2000).

Police officers in Georgia are permitted to administer bodily alcohol concentration tests to motorists in order to determine whether the motorists are driving under the influence of alcohol or drugs without first warning that the results of such tests may be used in a criminal trial for DUI. *Lutz v. State*, 274 Ga. 71, 548 S.E.2d 323 (2001).

Implied consent statute does not violate

the dictates of equal protection set forth in the Georgia and federal Constitutions. *Lutz v. State*, 274 Ga. 71, 548 S.E.2d 323 (2001).

Constitutionality of 1995 amendment. — Amendment of O.C.G.A. § 40-5-67.1 effective in August, 1995, which changed the retroactive effect of the amendment effective in April, 1995, so that the amendment applied only to stops made after the effective date of the April amendment, rather than to cases pending on such date, did not violate federal or state ex post facto provisions or the uniformity or special laws provisions of the state constitution. *State v. Martin*, 266 Ga. 244, 466 S.E.2d 216 (1996).

Effect of the 1995 amendment on pending cases. — See *State v. Boone*, 221 Ga. App. 256, 471 S.E.2d 53 (1996).

Retroactive application of amendment improper. — Trial court erroneously applied the amendment of O.C.G.A. § 40-5-67.1(d) retroactively to the defendant's criminal matter, wherein the court

denied suppression of a blood test result taken of the defendant as the investigating officer failed to provide the defendant with the requisite notice of the implied consent rights under O.C.G.A. § 40-5-55(a) prior to obtaining the defendant's consent; retroactive application of § 40-5-67.1(d) was improper because the amendment eliminated the defendant's substantive right to refuse to submit to testing. *Williams v. State*, 297 Ga. App. 626, 677 S.E.2d 773 (2009).

Implied consent provision unconstitutional. — Trial court erred in denying the defendant's motion to suppress the results of a blood test the defendant consented to after a state trooper read the defendant the implied consent notice under O.C.G.A. § 40-5-67.1(b)(2), which informed the defendant that Georgia law required the defendant to submit to chemical testing, that the refusal to submit to testing would lead to the suspension of the defendant's driving privileges, and that the defendant's refusal might be offered into evidence against the defendant at trial; the defendant was not suspected of violating O.C.G.A. § 40-6-391 when the defendant was advised of the implied consent law, O.C.G.A. § 40-5-55(a) (which was unconstitutional), and the defendant's consent was invalid. *Cooper v. State*, 277 Ga. 282, 587 S.E.2d 605 (2003).

No valid equal protection claim. — Trial court did not err in denying the defendant's motion to suppress results of breath tests as the statutory implied consent warning given to the defendant was not unconstitutional for not informing the defendant that the results of chemical testing could be used against a motorist at trial, even though the statutes involving intoxicated hunters and boaters gave such warning, as hunters and boaters were not similarly situated to motorists for purposes of an equal protection challenge. *Young v. State*, 275 Ga. 309, 565 S.E.2d 814 (2002).

No substantive legal rights created. — Subsection (b) of O.C.G.A. § 40-5-67.1 does not create any substantive legal rights, but instead, the statute is a notice provision that prescribes the method by which a police officer should notify DUI suspects of their legal rights regarding

chemical testing. *State v. Levins*, 235 Ga. App. 739, 507 S.E.2d 246 (1998).

Construction with O.C.G.A. § 40-5-55. — O.C.G.A. § 40-5-55 is the springboard for a law enforcement officer's duties under O.C.G.A. § 40-5-67.1 to request chemical testing of a driver's bodily substances and to inform the driver of the implied consent warning; the two statutes are in *pari materia* since the statutes relate to the same subject matter. *Snyder v. State*, 283 Ga. 211, 657 S.E.2d 834 (2008).

Purpose of statute. — Purpose of the implied consent law is to notify drivers of the drivers' rights so that the drivers can make informed decisions; accordingly, appellate courts have suppressed the results of chemical tests when the driver was misinformed of the driver's rights and when the misinformation may have affected the driver's decision to consent. *Kitchens v. State*, 258 Ga. App. 411, 574 S.E.2d 451 (2002).

Standard of review. — It was error to affirm a decision to suspend a driver's license when, after being advised of the implied consent rights and of the consequences of refusing to submit to a state-administered breath test, the driver refused the test; as the correct standard of review was the "any evidence" test because the hearing before the administrative law judge was conducted pursuant to O.C.G.A. § 40-5-67.1, the appeal in the superior court was expressly excepted from O.C.G.A. § 40-5-66(a), and had to be conducted pursuant to O.C.G.A. § 40-5-67.1(h); moreover, the administered breath tests were not invalid merely because the officer gave the breath tests ten minutes apart, and the driver's failure to give an adequate sample could not be used to suspend the license. *Dozier v. Pierce*, 279 Ga. App. 464, 631 S.E.2d 379 (2006).

No effect on implied consent. — O.C.G.A. § 40-5-67.1, upon becoming effective, did not repeal that portion of O.C.G.A. § 40-6-392 regarding implied consent. O.C.G.A. § 40-5-67.1 primarily concerns the methods and procedures to effect the administrative suspension of a driver's license based upon the use of chemical test results, does not address the

General Consideration (Cont'd)

admissibility of evidence in a criminal trial, and was intended to provide additional consent notice requirements. *State v. Hassett*, 216 Ga. App. 114, 453 S.E.2d 508 (1995).

An implied consent warning read to the defendant prior to the defendant's consent to a test did not adequately inform the defendant that the defendant's consent was for any purpose other than the stated purpose of prosecution for driving under the influence, therefore, the test results were properly suppressed in a prosecution for possession of cocaine. *State v. Frazier*, 229 Ga. App. 344, 494 S.E.2d 36 (1997).

Results of a blood test consented to by the defendant in response to the implied consent warning found in O.C.G.A. § 40-5-67.1 could not be used in a prosecution for possession of cocaine because use of the test to support the possession charge was beyond the scope of the consent given. *State v. Jewell*, 228 Ga. App. 825, 492 S.E.2d 706 (1997); *State v. Burton*, 230 Ga. App. 753, 498 S.E.2d 121 (1998).

State must demonstrate notice requirements. — State cannot admit evidence of a defendant's chemical test results, or of the defendant's refusal to take a test, without demonstrating that the state met the implied consent notice requirements. *Baird v. State*, 260 Ga. App. 661, 580 S.E.2d 650 (2003).

Right to additional test. — There is nothing about the plain language of either subsection (b)(3) of O.C.G.A. § 40-5-67.1 or O.C.G.A. § 40-6-392(b)(2) which would preclude the defendant from affirmatively choosing to have the state's qualified testing officer perform an additional breath test at the defendant's expense. *Nawrocki v. State*, 235 Ga. App. 416, 510 S.E.2d 301 (1998).

Right against self-incrimination. — Use of a substance naturally excreted by the human body does not violate a DUI suspect's constitutional rights, and therefore there is no requirement that the suspect be informed of the suspect's right against self-incrimination by a police officer giving the suspect the implied consent

notice. *Nawrocki v. State*, 235 Ga. App. 416, 510 S.E.2d 301 (1998).

Administrative and criminal prosecutions not double jeopardy. — Suspension of the defendant's operator's license pursuant to administrative proceedings did not constitute former punishment foreclosing prosecution for driving under the influence in violation of double jeopardy provisions. *Jackson v. State*, 218 Ga. App. 677, 462 S.E.2d 802 (1995).

Loss of commercial license. — Implied consent notice given to a defendant under O.C.G.A. § 40-5-67.1(b)(2) did not violate due process; the ability to refuse to submit to chemical testing was not a constitutional right and as a trooper advised the defendant that a refusal to submit to testing could result in the suspension of the defendant's personal driver's license, the trooper was not required to also advise the defendant that under O.C.G.A. § 40-5-151(c), the defendant could also lose the defendant's commercial driver's license for life. *Chancellor v. State*, 284 Ga. 66, 663 S.E.2d 203 (2008).

Suspension of license not prosecution for double jeopardy purposes. — Suspension of a driver's license at an administrative hearing was not punishment, nor was the hearing a prosecution for the purposes of double jeopardy; thus, a subsequent criminal prosecution for driving under the influence was not barred. *Nolen v. State*, 218 Ga. App. 819, 463 S.E.2d 504 (1995), cert. denied, 518 U.S. 1018, 116 S. Ct. 2550, 135 L. Ed. 2d 1070 (1996); *Kirkpatrick v. State*, 219 Ga. App. 307, 464 S.E.2d 882 (1995); *Walsh v. State*, 220 Ga. App. 514, 469 S.E.2d 526 (1996).

Payment of the fee required for reinstatement of a driver's license after the license was suspended following an arrest for driving under the influence was not punishment and did not bar a subsequent prosecution for driving under the influence. *Thompson v. State*, 229 Ga. App. 526, 494 S.E.2d 306 (1997); *Morgan v. State*, 229 Ga. App. 861, 495 S.E.2d 138 (1998).

Arrest requirement established. — Testimony of police officer that the officer went to interview the defendant in a hos-

pital emergency room where the defendant had been taken from the accident scene, that the officer placed the defendant under arrest prior to reading the defendant the implied consent warning, and that the defendant indicated the defendant understood, was sufficient to support a finding that the defendant was placed under arrest. *Lee v. State*, 222 Ga. App. 389, 474 S.E.2d 281 (1996).

Sufficient cause for arrest. — Arrestee failed to produce evidence creating a genuine issue of material fact with regard to the arrestee's Fourth Amendment claim; the smell of alcohol was sufficient to give the officer reasonable suspicion that the arrestee had been driving under the influence of alcohol. As the officer engaged in a reasonable investigation, including requesting that the arrestee submit to a breathalyzer test, the arrestee refused to cooperate and this refusal gave the officer probable cause to arrest the arrestee. *Miller v. Hargett*, 458 F.3d 1251 (11th Cir. 2006).

Results cannot be used as basis for possession charge. — Results of blood or urine tests obtained pursuant to the language of the implied consent warnings cannot be used as the basis for a possession charge since, under the language of the warnings, the suspect consents to such tests only for the purpose of determining whether the suspect was under the influence of drugs or alcohol, and thus the use of the tests for any purpose other than that exceeds the scope of the consent given. *Cronan v. State*, 236 Ga. App. 374, 511 S.E.2d 899 (1999).

Impact of voluntary consent to test. — Pursuant to O.C.G.A. § 40-5-67.1(d.1), a trial court did not err in denying the defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant voluntarily consented to the breath test. *Jones v. State*, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

Court's directed verdict of acquittal made issues moot. — Defendant was unable to show harm from the denial of a pretrial motion to dismiss evidence of a breath test administered before the defendant was read the implied consent rights

as required by O.C.G.A. § 40-5-67.1(b)(2), and without being informed of the right to an independent chemical analysis as required by O.C.G.A. § 40-6-392(a)(4) because at trial the trial court directed a verdict of acquittal on the charge of driving under the influence with a blood alcohol level higher than 0.08 percent. *Hernandez v. State*, 297 Ga. App. 177, 676 S.E.2d 795 (2009).

Cited in *Wells v. State*, 212 Ga. App. 15, 440 S.E.2d 692 (1994); *Miles v. Wells*, 225 Ga. App. 698, 484 S.E.2d 720 (1997); *Radcliffe v. State*, 234 Ga. App. 576, 507 S.E.2d 759 (1998); *Satterfield v. State*, 252 Ga. App. 525, 556 S.E.2d 568 (2001); *Leiske v. State*, 255 Ga. App. 615, 565 S.E.2d 925 (2002); *Quintana v. State*, 276 Ga. 731, 583 S.E.2d 869 (2003); *Pittman v. State*, 286 Ga. App. 415, 650 S.E.2d 302 (2007); *Davis v. State*, 286 Ga. App. 443, 649 S.E.2d 568 (2007); *Horne v. State*, 286 Ga. App. 712, 649 S.E.2d 889 (2007); *McWilliams v. State*, 287 Ga. App. 585, 651 S.E.2d 849 (2007); *Daniel v. State*, 298 Ga. App. 245, 679 S.E.2d 811 (2009); *Watterman v. State*, 299 Ga. App. 630, 683 S.E.2d 164 (2009).

Advisement to Driver of Rights

Effect of 1995 amendment. — Because of the addition of subsection (b.1) of O.C.G.A. § 40-5-67.1 in 1995, in a case pending on August 18, 1995, involving an offense committed prior to April 21, 1995, the mandatory language of paragraph (b)(2) did not apply and a warning that clearly informed the defendant that the defendant could have an additional test by a qualified person of the defendant's own choosing was sufficient. *Howard v. State*, 219 Ga. App. 228, 465 S.E.2d 281 (1995); *Dooley v. State*, 221 Ga. App. 245, 470 S.E.2d 803 (1996); *Stymest v. State*, 221 Ga. App. 251, 470 S.E.2d 806 (1996).

Amendment of O.C.G.A. § 40-5-67.1 effective in August, 1995, which changed the retroactive effect of the amendment effective in April, 1995, so that the amendment applied only to stops made after the effective date of the April amendment, rather than to cases pending on such date, applied to make valid a consent warning given to the defendant in September, 1995; reversing *Martin v. State*, 217 Ga.

Advisement to Driver of Rights (Cont'd)

App. 860, 460 S.E.2d 92 (1995). State v. Martin, 266 Ga. 244, 466 S.E.2d 216 (1996).

Offenses committed prior to April 21, 1995 are governed by the provisions of O.C.G.A. §§ 40-5-67.1 and 40-6-392 as those provisions existed prior to the 1995 amendment. Park v. State, 220 Ga. App. 215, 469 S.E.2d 353 (1996).

Amendment to O.C.G.A. § 40-5-67.1, effective August 18, 1995, provides that the new implied consent warning requirement applies only as to "an offense committed on or after April 21, 1995." The applicable law in situations where the request for testing is made regarding an offense occurring before April 21, 1995, include inter alia that a suspect is not entitled to a warning which tracks the exact language of this section; the sufficiency of the warning is to be judged by the warning's content and not the warning's form; and the warning must inform the suspect that the suspect could have an additional test by a qualified person of the suspect's own choosing. State v. Golub, 220 Ga. App. 810, 470 S.E.2d 331 (1996).

Effect of 1998 amendments. — The 1998 amendment to O.C.G.A. § 40-5-67.1 applied to an implied consent warning given to a motorist before the effective date of the amendment since the amendment does not affect the manner or degree of punishment, did not alter any substantive rights conferred on the motorist by law, and does not violate state or federal ex post facto constitutional provisions. State v. Moncrief, 234 Ga. App. 871, 508 S.E.2d 216 (1998).

Court would apply the 1998 amendment to O.C.G.A. § 40-5-67.1, even though the amendment became effective after the state filed the state's notice of appeal, since the amendment did not change any substantive rights of the defendants. State v. Nolen, 234 Ga. App. 291, 508 S.E.2d 733 (1998).

The 1998 amendment to O.C.G.A. § 40-5-67.1, providing that the implied consent notice did not have to read exactly as the statute so long as the substance remained unchanged, had retroactive ef-

fect. State v. Payne, 236 Ga. App. 338, 512 S.E.2d 292 (1999).

Amendments to O.C.G.A. § 40-5-67.1 in March 1998, providing that the implied consent warning notice did not need to be read exactly so long as the substance remained unchanged, were procedural in nature and were given retroactive effect. State v. McGraw, 237 Ga. App. 345, 514 S.E.2d 34 (1999).

Version as amended in 1998 to be applied to all cases on appellate review. — O.C.G.A. § 40-5-67.1 is procedural, and thus, the 1998 amended version will be applied to cases on appellate review regardless of the effective date of the amendment in relation to the incident date of the case. State v. Mayo, 235 Ga. App. 107, 508 S.E.2d 475 (1998).

Timing of warning. — Implied consent warning must be given at a time as close in proximity to the instant of arrest as the circumstances of that particular case might warrant. Townsend v. State, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

When the timing was warranted by the circumstances, a delay of approximately 16 minutes between the defendant's arrest and the reading of the implied consent notice did not require suppression of the defendant's refusal to submit to chemical testing. State v. Marks, 239 Ga. App. 448, 521 S.E.2d 257 (1999).

Although a police officer who detected a strong order of alcohol coming from the defendant who was standing over a motorcycle that was involved in an accident informed the defendant of the defendant's rights under Georgia's implied consent statute before the officer arrested the defendant for driving under the influence of alcohol, the appellate court found that the defendant was not free to leave at the time the implied consent warning was read to the defendant, and the court held that the reading of the notice satisfied the requirements of O.C.G.A. §§ 40-5-55, 40-5-67.1(a), and 40-6-392(a)(4). Oliver v. State, 268 Ga. App. 290, 601 S.E.2d 774 (2004).

Notice can be given in close proximity before arrest. — O.C.G.A. § 40-5-67.1 implied consent notice given at the "time of arrest" under O.C.G.A. § 40-6-392 was timely when the notice

preceded the formal arrest by a few seconds and the O.C.G.A. § 40-5-55(a) state-administered chemical testing, "Intoxilyzer 5000" testing, was done after the arrest. The "time of the arrest" included times as close in proximity to the instant of arrest as the circumstances of the individual case might warrant. *Kahl v. State*, 268 Ga. App. 879, 602 S.E.2d 888 (2004).

Right to have additional test administered. — Language of O.C.G.A. § 40-6-392 made it clear that a person must be advised of the right to have an additional test administered by a qualified person of that person's own choice in addition to the one administered by the arresting officer. The failure to so inform invalidated the result of any test and also justified the refusal to submit to a test. *Garrett v. Department of Pub. Safety*, 237 Ga. 413, 228 S.E.2d 812 (1976) (decided under former Code 1933, § 68B-306).

Failure of an arresting officer to advise the suspect of the suspect's rights to a chemical test or tests according to former Code 1933, § 68A-902.1 (see O.C.G.A. § 40-6-392(a)(3)) rendered the results of the test inadmissible in later proceedings. *Rogers v. State*, 163 Ga. App. 641, 295 S.E.2d 140 (1982) (decided under former Code 1933, §§ 68A-902.1 and 68B-306).

State may not use the accused's refusal to submit to the state-administered test to suspend the accused's driver's license since the accused was not informed, at the time of arrest, or at a time in proximity to the accused's arrest if the circumstances of the case warrant a later time, of the accused's right to an independent chemical analysis to determine blood alcohol or drug contents. *Perano v. State*, 250 Ga. 704, 300 S.E.2d 668 (1983) (decided under former Code 1933, § 68A-902.1).

When it was uncontroverted in three consolidated cases that the arresting officer did not inform the defendant of the defendant's right, after submission to the state-administered test, to have an independent test administered by a qualified person of the defendant's own choosing, the trial court properly granted the defendant-appellees' motions to exclude the results of the state-administered tests or the refusal to submit to testing. *State v.*

Hassett, 216 Ga. App. 114, 453 S.E.2d 508 (1995).

Defendant's failure to complete a breath test without justification negated the defendant's right to an alternative test. *Allen v. State*, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

Motorist was not denied the right to an independent blood alcohol test by qualified personnel of the motorist's own choosing since the evidence showed that, after the defendant requested an additional test, the defendant was taken to the nearest hospital where the defendant's blood was drawn and tested, and the defendant neither objected to being there nor requested a specific doctor. *Lambropoulos v. State*, 234 Ga. App. 625, 507 S.E.2d 225 (1998).

There is no requirement that a suspect bond out before being entitled to an independent test, but merely that the suspect first agree to take a state-administered test. *State v. Terry*, 236 Ga. App. 248, 511 S.E.2d 608 (1999).

Notice is silent as to when an independent test will be administered. *State v. Terry*, 236 Ga. App. 248, 511 S.E.2d 608 (1999).

If a suspect agrees to the state-administered test, the police must make a reasonable effort to accommodate the accused who seeks an independent test. *State v. Terry*, 236 Ga. App. 248, 511 S.E.2d 608 (1999).

There was no error in denying the defendant's motion to suppress because the law did not require that the officer making the DUI arrest ask the accused if the accused wished to have an independent chemical test after the officer read the implied consent notice informing the accused of that option under O.C.G.A. § 40-5-67.1(b)(2). *McArthur v. State*, 276 Ga. App. 872, 625 S.E.2d 68 (2005).

No evidence of request for additional test. — After a police officer properly advised the defendant of the defendant's rights under the implied consent notice, and since there was no evidence in the record establishing that the defendant ever requested to be taken to the hospital to exercise the defendant's right to an independent breath test, the trial court erred in making a factual finding that

Advisement to Driver of Rights (Cont'd)

such a request was made. *State v. Gillette*, 236 Ga. App. 571, 512 S.E.2d 399 (1999).

Officer elects test. — As long as a defendant's right to an independent chemical test was clear, an officer may have obtained consent for more than one chemical test and then elected which consented-to "test or tests" were to have been administered; thus, an order suppressing the defendant's breath test results was reversed. *State v. Brantley*, 263 Ga. App. 209, 587 S.E.2d 383 (2003).

Implied consent warning was not rendered defective or misleading by the arresting officer's failure to initiate administrative license suspension proceedings immediately after the defendant's arrest. *Singleterry v. State*, 227 Ga. App. 155, 489 S.E.2d 42 (1997).

Unimportant misstatements made in giving the implied consent warning did not require suppression of the test results since the meaning of the implied consent warning did not change and the motorist was unharmed. *Harrison v. State*, 235 Ga. App. 78, 508 S.E.2d 459 (1998).

Officer's mistakenly informing the defendant that the defendant's driver's license was subject to suspension if the defendant's alcohol concentration was .01 grams or more, instead of the legal limit of .10 grams, did not change the substance of the notice in any way harmful to the defendant. *Maurer v. State*, 240 Ga. App. 145, 525 S.E.2d 104 (1999).

Even though an officer read the implied consent warning incorrectly due to a slip of the tongue, the mistake was harmless and did not render the blood test results inadmissible. *Yarbrough v. State*, 241 Ga. App. 777, 527 S.E.2d 628 (2000).

Although the police officer who read the defendant the implied consent warning of O.C.G.A. § 40-5-67.1(b)(2) concluded the warning by asking if the defendant would submit to breath and blood tests, the language of O.C.G.A. § 40-5-67.1(a) indicated that the officer's request for consent to conduct both kinds of tests did not mean that both types of tests had to be given; the wording of the officer's request and the officer's ultimate decision to con-

duct only breath tests could not have misled the defendant into believing that the defendant could not request an independent blood test. *Mueller v. State*, 257 Ga. App. 830, 572 S.E.2d 627 (2002).

Reference to "test" or "tests" in notice. — Arresting officer's reading of the implied consent warning did not change the substance of the notice, and thus, did not require suppression of the defendant's refusal to submit to chemical testing since the officer informed the defendant that the defendant was entitled to an additional chemical "test" rather than "tests" as stated in the statute. *Rojas v. State*, 235 Ga. App. 524, 509 S.E.2d 72 (1998).

When the officer was requesting consent for only one test, correcting the grammar of the sentence by changing "test" to "tests" is not a substantive change which alters the meaning of the question, but makes the critical sentence in the warning, which defines the test for which consent is sought, more understandable. *State v. Sneddon*, 235 Ga. App. 739, 510 S.E.2d 566 (1998).

When a police officer changed the word "tests" to "test" in the officer's implied consent warnings to the defendant because the officer only asked the defendant to submit to one type of state administered test, the officer's warnings satisfied the statutory requirements. *State v. Black*, 236 Ga. App. 56, 510 S.E.2d 903 (1999).

When the defendant was informed that the law required the defendant to submit to a state administered test, that was the significant point in that portion of the implied consent warning, and the substitution of the word "test" for "tests" did not render the results of the breath test inadmissible. *Sheridan v. State*, 236 Ga. App. 350, 511 S.E.2d 908 (1999).

Substitution of "test" for "tests" and "substance" for "substances" did not alter the substance of the statutory implied consent notice, and suppression was therefore not required. *State v. Payne*, 236 Ga. App. 338, 512 S.E.2d 292 (1999).

Police officer's replacement of the word "test" for "tests," coupled with the officer's grammatical errors in the giving of the implied consent warning notice, did not affect the substance of the notice. *State v.*

McGraw, 237 Ga. App. 345, 514 S.E.2d 34 (1999).

Even if it was error for a police officer to have informed the defendant that the defendant was entitled to an "additional chemical test," rather than "tests," any such error was immaterial since the defendant rejected any additional test at all. *State v. McGraw*, 237 Ga. App. 345, 514 S.E.2d 34 (1999).

Requirement that the notice "shall be read in its entirety" means that police officers are to read the warning all the way through, instead of reading, for example, only half of the notice; however, the legislature allowed for human error in the reading of the warning, such as the omission of a word or two, as long as the notice's meaning is not affected. *State v. Garnett*, 241 Ga. App. 315, 527 S.E.2d 21 (1999).

Substance of notice unchanged by omission of word. — Arresting officer's omission of the word "and" in the next to last sentence of the statutory implied consent warning did not change the substance of the required statutory notice and therefore complied with the 1998 amended version of O.C.G.A. § 40-5-67.1. *State v. Nolen*, 234 Ga. App. 291, 508 S.E.2d 733 (1998).

Police officer's reading of the implied consent notice was sufficient, and the defendant's blood test results should not have been suppressed in the defendant's DUI prosecution for the officer's failure to use the exact statutory language after the officer omitted two words from the implied consent notice, but the defendant was not misled. *State v. Levins*, 235 Ga. App. 739, 507 S.E.2d 246 (1998).

Privilege against self-incrimination. — Implied consent warnings administered to motorists suspected of driving under the influence need not inform the motorists of their privilege against self-incrimination. *Heller v. State*, 234 Ga. App. 630, 507 S.E.2d 518 (1998).

Warning in substantial compliance with O.C.G.A. § 40-5-67.1 was sufficient. *State v. McCabe*, 239 Ga. App. 297, 519 S.E.2d 760 (1999).

Failure to read specific language of implied consent warning. — An officer's possible substitution of "test" for

"tests" in reading the last sentence of the prescribed notice amounted to a verbatim reading since the officer was asking for consent for only one test. *State v. Hopkins*, 232 Ga. App. 705, 503 S.E.2d 590 (1998).

Verbatim reading of the implied consent notice is not required. *Bass v. State*, 238 Ga. App. 503, 519 S.E.2d 294 (1999), overruled on other grounds, *Jones v. State*, 272 Ga. 900, 537 S.E.2d 80 (2000).

Must read language exactly. — In advising a motorist of the motorist's implied consent rights, a police officer was required to read the exact language of subsection (b) of O.C.G.A. § 40-5-67.1. *State v. Fielding*, 229 Ga. App. 675, 494 S.E.2d 561 (1997).

Notice insufficient when proof of what was read to defendant inadequate. — Defendant's blood test results should have been suppressed because, although a nurse and an officer testified that the officer read the implied consent warning to the defendant prior to the blood draw, the actual card from which the officer read was not admitted into evidence, the state did not produce evidence of what was read to the defendant, and the state thus failed to prove that the state complied with the O.C.G.A. § 40-5-67.1(b) implied consent notice requirements; in the absence of the blood test results, there was no competent evidence that the defendant had an alcohol concentration of .08 grams or more within three hours after driving as charged in the accusation. Thus, the conviction for DUI per se was not supported by sufficient evidence. *Epps v. State*, 298 Ga. App. 607, 680 S.E.2d 636 (2009).

Omission of information resulted in insufficient notice. — Court of appeals erred in reversing the trial court's grant of the defendant's motion to suppress evidence that the defendant refused to submit to chemical testing because the officer failed to convey the entire substance of the implied consent notice required by O.C.G.A. § 40-5-67.1(b)(2), omitting information about the consequence of refusal, rendering the notice insufficient to allow the defendant to make an informed decision about whether to submit to testing. *Sauls v. State*, 293 Ga. 165, 744 S.E.2d 735 (2013).

Advisement to Driver of Rights (Cont'd)

Advisement of rights momentarily interrupted by another call. — Results of the defendant's intoximeter test were admissible because the arresting officer advised the defendant of the defendant's rights under the implied consent law as close in proximity to the instant of arrest as the circumstances warranted when after the officer stopped the defendant and put the defendant in the patrol car, the officer got a call and went after another vehicle, picked up the driver and then took both of the drivers to the police station and read the defendant the implied consent rights while they were in the patrol car. *Fore v. State*, 180 Ga. App. 196, 348 S.E.2d 579 (1986).

Warning to driver suspected of intoxication. — Driver suspected of intoxication is not entitled to warning which tracks exact language of O.C.G.A. § 40-5-67.1. *Ivie v. State*, 151 Ga. App. 496, 260 S.E.2d 543 (1979); *Pryor v. State*, 182 Ga. App. 79, 354 S.E.2d 690 (1987).

Implied consent warnings that tracked the language of O.C.G.A. § 40-5-67.1 were not deceptive or misleading on the basis that the officer did not subsequently initiate an administrative license suspension. *Morrisette v. State*, 229 Ga. App. 420, 494 S.E.2d 8 (1997).

When an officer initially gave the implied consent warning correctly, the officer was under no duty to give further warnings or instructions, and the officer's subsequent statement to the defendant, i.e., that if the defendant did not submit to a breath test, the officer would suspend the defendant's driver's license was not false or misleading. *State v. Kirbabas*, 232 Ga. App. 474, 502 S.E.2d 314 (1998).

Implied consent notice given before arrest. — Required timing of the implied consent notice for a person who is involved in a traffic incident resulting in serious injuries or a fatality, and who is not arrested at that time for a violation of O.C.G.A. § 40-6-391 is: (a) law enforcement officers must administer chemical tests for alcohol and drugs as soon as possible; and (b) the implied consent notice must be given at the time such test is

requested, which may or may not be at the time of actual testing. *Joiner v. State*, 239 Ga. App. 843, 522 S.E.2d 25 (1999).

Arrest not required before reading of implied consent rights when defendant received serious injuries in accident. — Because a defendant was involved in an accident which resulted in serious injuries and the investigating officer had probable cause to believe that the defendant was driving under the influence, the officer was not required to arrest the defendant before the reading of implied consent; however, if a different accident did not involve serious injuries, the suspect needed to be under arrest before the implied consent rights were read. *Hough v. State*, 279 Ga. 711, 620 S.E.2d 380 (2005).

25 minute delay in reading implies consent notice acceptable. — Officer's testimony that: (1) the officer read the Georgia implied consent law from 1997; (2) the officer read the notice for suspects over 21; and (3) the officers read the notice twice because the defendant appeared not to understand was sufficient to prove compliance with the implied consent notice requirements. *Cullingham v. State*, 242 Ga. App. 499, 529 S.E.2d 199 (2000).

Trial court did not err in denying the defendant's motion to suppress as an officer's failure to read the implied consent notice in a timely manner did not warrant suppression given that the 25-minute delay was based on the officer's need to ensure safety by searching and interviewing the defendant's intoxicated passenger, investigate and secure the scene, and inventory the defendant's car before a tow truck arrived. *Dunbar v. State*, 283 Ga. App. 872, 643 S.E.2d 292 (2007).

Results of test suppressed when information misleading. — When the trial court found that the information given the defendant regarding the defendant's right to an independent test was substantially misleading, inaccurate, extraneous, and relevant to the defendant's decision whether to agree to the state-administered test, it was not error for the court to grant the defendant's motion to suppress. *State v. Terry*, 236 Ga. App. 248, 511 S.E.2d 608 (1999).

Substantial evidence supported the

trial court's decision to grant the defendant's motion to suppress evidence that was derived as a result of the defendant's submission to a breath test during a traffic stop after the defendant's consent to take the test was based, at least in part, on misleading information from the police officer that the defendant's out-of-state license could be suspended if the defendant refused to submit to the test; the officer had no authority to implement such a penalty for refusal. *State v. Peirce*, 257 Ga. App. 623, 571 S.E.2d 826 (2002).

Error not to have suppressed test results. — Trial court erred when the court did not suppress the defendant's breath test because the implied consent warning read to the defendant by the arresting officer was misleading, inaccurate, and coercive; however, there was sufficient evidence that the defendant was a less safe driver. *Kitchens v. State*, 258 Ga. App. 411, 574 S.E.2d 451 (2002).

Error in admitting chemical test results harmless in light of other evidence. — While the appeals court agreed that the trial court erred in denying the defendant's motion to suppress the results of the chemical test of the defendant's blood, the error was harmless as other evidence presented by the state, specifically the defendant's admission to being intoxicated and the testimony of other witnesses describing their observations, proved the defendant's intoxication. *Harrelson v. State*, 287 Ga. App. 664, 653 S.E.2d 98 (2007).

"Totality of circumstances" test inapplicable. — Because the choice afforded a suspect under the implied consent statute does not rise to the level of constitutional self-incrimination, it is improper for a court to apply the "totality of circumstances" test. The issues to be determined are simply whether the officer told the suspect of the suspect's implied consent rights in a timely fashion and whether the suspect revoked the implied consent. *State v. Highsmith*, 190 Ga. App. 838, 380 S.E.2d 272 (1989).

Warning to holder of commercial license driving private passenger car. — Because the defendant was over 18 and driving a private passenger car when arrested, it was appropriate to give the

defendant the implied consent warning for suspects over 18, even though the defendant held a commercial driver's license. *Meyer v. State*, 224 Ga. App. 183, 480 S.E.2d 234 (1997).

Warning to commercial driver. — Implied consent warning given to a commercial driver stating: "If you refuse this testing, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year" was a correct statement of the consequences for a refusal to submit to alcohol testing. *Roberson v. State*, 228 Ga. App. 416, 491 S.E.2d 864 (1997).

Notices advising the defendant that if the defendant refused testing the defendant would be disqualified from operating a commercial motor vehicle for a minimum of one year were adequate, even though the notices did not advise the defendant that refusal to submit to the tests could also disqualify the defendant from operating a private motor vehicle. *State v. Becker*, 240 Ga. App. 267, 523 S.E.2d 98 (1999).

Due process. — Administrative decision disqualifying a driver from driving a commercial motor vehicle for life based on the refusal to submit to state-administered chemical testing and a prior conviction for driving under the influence was upheld as the arresting officer informed the driver that the driver could lose that driver's license to drive upon refusing to submit to chemical testing, and the requirements of due process did not require the arresting officer to inform the driver of all the consequences of refusing to submit to chemical testing. Moreover, the driver requested and received a hearing under O.C.G.A. § 40-5-67.1(g)(1). *Chancellor v. Dozier*, 283 Ga. 259, 658 S.E.2d 592 (2008).

There was no unlawful coercion after the officer merely informed the arrestee of the permissible range of sanctions that the state is authorized to impose. The fact that the driver's license was not ultimately suspended did not mean that the officer was not informed of the true and legitimate consequences of the officer's refusal or performance on the test. *Gutierrez v. State*, 228 Ga. App. 458, 491 S.E.2d 898 (1997).

Advisement to Driver of Rights (Cont'd)

Defendant was properly advised. —

In a driving under the influence case, the state met the state's burden of showing that the defendant had been properly advised of an implied consent notice. Although a card an officer read into evidence was of a later date than the card the officer had read to the defendant, the officer testified that the language of the cards was the same, and the language accurately informed the defendant of the applicable implied consent notice. *State v. Cato*, 289 Ga. App. 702, 658 S.E.2d 124 (2008).

Because a police officer's actions, including reading the defendant the implied consent warnings in O.C.G.A. § 40-5-67.1(g)(2)(B) multiple times, were reasonable and the procedure utilized was fair, the results of a toxicology report, indicating that 0.24 milligrams per liter of benzoylecgonine, a metabolite of cocaine, was present in the defendant's blood, was sufficient for the jury to find the defendant guilty of violating O.C.G.A. § 40-6-391(a)(6). *Page v. State*, 296 Ga. App. 431, 674 S.E.2d 654 (2009).

Trial court erred in granting a defendant's motion to suppress evidence of the defendant's refusal to submit to chemical testing on the basis that the arresting officer failed to inform the defendant, pursuant to O.C.G.A. § 40-5-67.1(b)(2), that the defendant's refusal to submit could be used against the defendant at trial. The officer informed the defendant that failure to take the test would result in loss of driving privileges for one year; thus the officer made it clear that refusing the test was not a safe harbor, free of adverse consequences. *State v. Sauls*, 315 Ga. App. 98, 728 S.E.2d 241 (2012).

Defendant was not entitled to have the results of a breath test excluded because the officer's failure to designate a specific state-administered test for which consent was being requested did not change the meaning of the notice required under O.C.G.A. § 40-5-67.1; the defendant was under notice that state-administered chemical tests would be of the defendant's blood, breath, urine, or other bodily sub-

stances. *Nagata v. State*, 319 Ga. App. 513, 736 S.E.2d 474 (2013).

Since the defendant did not assert that the defendant was under 21 or occupied a commercial vehicle, the notice of implied consent for those over 21 was the only appropriate notice for the officer to have read to the defendant, who held a license from North Carolina. *State v. Barnard*, 321 Ga. App. 20, 740 S.E.2d 837 (2013).

Trial court did not err in excluding the breath test results because the arresting officer read the appropriate implied consent warning for persons over 21 as there was no evidence that the defendant had an out-of-state driver's license, the defendant did not assert that the defendant was under 21, or occupied a commercial motor vehicle. *State v. Gaggini*, 321 Ga. App. 31, 740 S.E.2d 845 (2013).

Driver Incapable of Understanding Rights

Advisement, not understanding, is all that is required. — All drivers are entitled only to be advised of their rights under the implied consent law, that is, to have the implied consent notice read to the drivers, and the law does not require the arresting officer to ensure that the driver understands the implied consent notice. *Furcal-Peguero v. State*, 255 Ga. App. 729, 566 S.E.2d 320 (2002), cert. denied, 537 U.S. 1233, 123 S. Ct. 1356, 155 L. Ed. 2d 197 (2003).

When an officer read a defendant an implied consent notice under O.C.G.A. § 40-5-67.1(b) accurately and timely, the notice was valid irrespective of the defendant's claimed inability to understand the notice; thus, even if the defendant's later refusal to provide a breath sample resulted from a failure to comprehend the consequences of the defendant's conduct, the refusal was admissible against the defendant. *State v. Stewart*, 286 Ga. App. 542, 649 S.E.2d 525 (2007), cert. denied, 2008 Ga. LEXIS 120 (Ga. 2008).

Results of blood test admissible though defendant unconscious. — When the evidence shows that advice as to independent tests available cannot be given because of unconsciousness, it was the intent of the General Assembly that, under the exigent circumstances, the offi-

cer lawfully can extract a blood specimen under the aegis of protection of evidence. *Smith v. State*, 143 Ga. App. 347, 238 S.E.2d 698 (1977) (decided under former Code 1933, § 68A-902.1).

For blood drawn from an unconscious driver to be used for a blood alcohol test it is not necessary that the state show that the driver was informed, upon regaining consciousness of the right to refuse such testing. *Long v. State*, 176 Ga. App. 89, 335 S.E.2d 587 (1985).

Even if the defendant was unconscious or semi-conscious, and thereby incapable of refusing to consent to a blood test, the results of the test were nevertheless admissible. *Holmes v. State*, 180 Ga. App. 787, 350 S.E.2d 497 (1986); *Curtis v. State*, 182 Ga. App. 388, 355 S.E.2d 741 (1987).

Driver too intoxicated to understand officer's advisement. — When the investigating officer testified that the officer did not advise the appellant of appellant's rights concerning intoxicant tests, because, based on the officer's observation, appellant was incapable of understanding the advice because the appellant was unconscious or only semi-conscious, and when the officer's testimony was supported by facts that the appellant was lying flat on the appellant's back with an oxygen mask covering the appellant's face, had a blood alcohol count of .20, and was in apparent pain while in the emergency room, it could not be said that the trial court erred in denying the appellant's motions to suppress the results of chemical test. *Rogers v. State*, 163 Ga. App. 641, 295 S.E.2d 140 (1982) (decided under former Code 1933, § 68A-902.1).

Subsequent administration of test required reading notice again. — Because a defendant, who was charged with driving under the influence in violation of O.C.G.A. § 40-6-391, was confused after a police officer read the defendant the implied consent warning, and the defendant failed to respond to the officer's request to administer the chemical breath test, such a response was tantamount to a refusal, and accordingly, when the defendant was then taken to a detention center it was error to administer the test without the defendant being asked to consent again or

without reading the implied consent warnings pursuant to O.C.G.A. § 40-5-67.1, and suppression of the results was required. *State v. Adams*, 270 Ga. App. 878, 609 S.E.2d 378 (2004).

Timing of warning. — When there was a perceived threat of a fire or explosion at the accident scene and an apparent need for prompt medical transportation of the defendant for medical treatment, there was a fair risk that the defendant would not have been able to make an intelligent choice concerning the state's request for a blood test, and the implied consent warning given at the hospital was timely given. *Townsend v. State*, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Spanish speaking drivers. — Results of state-administered blood alcohol test given to a driver suspected of driving under the influence who could not speak English and who was only advised of the driver's rights under the implied consent statute in English were admissible because the driver consented to chemical intoxication tests by driving on the state's roads, because the officer advised the defendant of the defendant's implied consent rights, albeit in English, and because the defendant did not withdraw consent. Furthermore, admissibility of a state-administered test of the blood alcohol level of a person suspected of driving under the influence is not conditioned on the state's showing of a knowing and intelligent waiver of the "right" to an independent test. *Furcal-Peguero v. State*, 255 Ga. App. 729, 566 S.E.2d 320 (2002), cert. denied, 537 U.S. 1233, 123 S. Ct. 1356, 155 L. Ed. 2d 197 (2003).

Refusal by Driver to Submit to Test

License suspended only when person refuses test. — Only when a person has refused to submit to the chemical test upon the request of the law enforcement officer shall that person's license be suspended under the law. *Hardison v. Chastain*, 151 Ga. App. 678, 261 S.E.2d 425 (1979) (decided under former Code 1933, § 68A-902.1).

Arresting officer cannot take words of others as to refusal. — Simple question by the arresting officer as to whether or not the defendant was refusing the

Refusal by Driver to Submit to Test (Cont'd)

chemical blood test would have settled this issue, but the law enforcement officer did not ask the question, but took the words of others that the defendant had refused to take the test, and, therefore, the defendant's license could not be suspended. *Hardison v. Chastain*, 151 Ga. App. 678, 261 S.E.2d 425 (1979) (decided under former Code 1933, § 68A-902.1).

Refusal to submit to test based on "bad advice." — An officer is not required to ensure that a suspect be provided an environment free from another's "bad advice" when deciding whether to cooperate with a properly administered implied consent notice, especially when that advice does not enure to the state's benefit and especially when the suspect is equally free to ignore such advice. *State v. Marks*, 239 Ga. App. 448, 521 S.E.2d 257 (1999).

Form 1205. — O.C.G.A. § 40-5-67.1 expressly limits the scope of a hearing to challenge a license suspension to six enumerated issues including the lawfulness of the arrest, whether the motorist was informed of the implied consent rights, whether the motorist refused testing, the results of any test given, whether the testing was properly administered, and whether the arresting officer completed the DPS Form 1205 and submitted the Form to the department has no bearing on these issues, and nothing in the statute requires that the department tender the Form into evidence. *Miles v. Ahearn*, 243 Ga. App. 741, 534 S.E.2d 175 (2000).

If the arresting officer testifies in person as to the events of the arrest, the DPS Form 1205 clearly is not necessary to the resolution of the issues enumerated in O.C.G.A. § 40-5-67.1 and there is no need for an initial showing that the license was suspended because the fact of the suspension is not at issue. *Miles v. Ahearn*, 243 Ga. App. 741, 534 S.E.2d 175 (2000).

Pretense of complying with test. — That the defendant made a pretense of complying with an intoximeter test, but in fact failed to inflate the balloon, authorizes a finding that the defendant refused to submit to the test. The implied consent law requires a meaningful submission to

the test. *Howard v. Cofer*, 150 Ga. App. 579, 258 S.E.2d 195 (1979) (decided under former Code 1933, § 68A-902.1).

Not completing test within judgment of test operator. — When Ga. L. 1968, p. 448 fails to set out what constitutes a complete breath alcohol test, a showing that the driver of the automobile did not complete the test within the judgment of the operator is not evidence of a "refusal to submit" within the contemplation of the law. *Department of Pub. Safety v. Orr*, 122 Ga. App. 439, 177 S.E.2d 164 (1970) (decided under Ga. L. 1968, p. 448).

Defendant's failure to recall not inconsistent with state's showing of refusal. — Defendant's failure to recall the circumstances following a collision did not contradict the state's prima facie showing that the defendant was in a communicative condition — not dead, unconscious, or otherwise incapable of refusing the test — when informed of the defendant's rights and thereafter refused chemical testing of the defendant's blood. *Duncan v. State*, 183 Ga. App. 368, 358 S.E.2d 910 (1987).

Evidence of refusal admissible. — Defendant's refusal to take the chemical test was admissible in evidence notwithstanding the fact that the arresting officer mistakenly told the defendant that the defendant's license had already been revoked, since the officer's mistake concerning the license was an honest one, which had nothing to do with the defendant's options under the implied consent statute. *Sorrow v. State*, 178 Ga. App. 83, 342 S.E.2d 20 (1986).

Person is required to submit to a test to determine if the person is under the influence of alcohol or other drugs; however, a driver has the right to refuse to take a state administered test, subject to the mandate that exercise of the right of refusal shall be admissible in the driver's criminal trial. *State v. Leviner*, 213 Ga. App. 99, 443 S.E.2d 688 (1994).

Silence as refusal. — Defendant's refusal to permit a chemical analysis to be made of the defendant's blood, breath, urine, or other bodily substance at the time of the defendant's arrest is admissible in evidence against the defendant, and there is no reason that silence in the face of a request to take such a test should be

treated any differently than a refusal. *Miles v. State*, 236 Ga. App. 632, 513 S.E.2d 39 (1999).

When an officer testified that the officer read to the defendant the requisite "implied consent" notice set forth in O.C.G.A. § 40-5-67.1(b), the defendant's refusal to submit to the test was admissible as evidence against the defendant, and this does not rise to the level of constitutional self-incrimination. *Ellison v. State*, 242 Ga. App. 636, 530 S.E.2d 524 (2000).

After a police officer read the defendant the correct informed consent notice pursuant to O.C.G.A. § 40-5-67.1(b)(2) and the defendant's questions regarding the defendant's submission or refusal to submit to the chemical testing were answered accurately, the information was not false or misleading, and the consequences of the defendant's submission or refusal to submit to the test were provided; thus, there was no substantial basis for a determination that the defendant was incapable of making an informed decision, and the trial court erred in excluding the defendant's refusal to submit to the testing in that instance. *State v. Chun*, 265 Ga. App. 530, 594 S.E.2d 732 (2004).

Defendant's refusal to submit to chemical testing was admissible because, after the defendant refused, the officers improperly obtained a search warrant and forcibly conducted the testing; the remedy for the officers' misdeed was exclusion of the test results, not exclusion of evidence of the defendant's refusal to submit to testing. *Harris v. State*, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Defendant's refusal to submit to chemical testing was admissible even though the state introduced evidence of the blood alcohol level from the defendant's medical records; the test results and the refusal to submit were admissible for different reasons and the admissibility of one did not preclude the admissibility of the other. *Harris v. State*, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Defendant's conviction for driving under the influence to the extent that the defendant was a less safe driver under O.C.G.A. § 40-6-391(a)(1) was affirmed as the conviction was supported by sufficient evidence including: (1) the defendant's ad-

missions that the defendant had been driving a motorcycle and that the defendant had consumed "beer, tequila, and lots of alcohol" earlier in the day; (2) the defendant's refusal to submit to state-administered chemical testing; and (3) a deputy's opinion that the defendant was under the influence of alcohol to the extent that the defendant was a less safe driver. *Kimbrell v. State*, 280 Ga. App. 867, 635 S.E.2d 237 (2006).

Trial court erred in suppressing the defendant's refusal to submit to a state-administered chemical breath test as the implied consent notice given by a sheriff's deputy was substantially accurate and timely given, and irrespective of whether the refusal resulted from the defendant's confusion, it nevertheless remained a refusal. *State v. Brookbank*, 283 Ga. App. 814, 642 S.E.2d 885 (2007).

Defendant's refusal to submit to a state-administered chemical test of blood, breath, urine, or other bodily substance was admissible as evidence of the defendant's intoxication. *Stewart v. State*, 288 Ga. App. 735, 655 S.E.2d 328 (2007).

Evidence of refusal. — State was not collaterally estopped from introducing evidence of the defendant's refusal to submit to a breath test when the state was not given the opportunity to fully litigate the issue at an administrative hearing regarding the defendant's driver's license suspension. *Swain v. State*, 251 Ga. App. 110, 552 S.E.2d 880 (2001).

Effect of refusal. — By refusing the state-administered breath test after being advised under O.C.G.A. § 40-5-67.1, the defendant forfeited any right to an independent blood test. *Renkiewicz v. State*, 283 Ga. App. 692, 642 S.E.2d 384 (2007).

Conduct constituting refusal. — When a defendant went to a breathalyzer machine but plugged the hole with the defendant's tongue and declined to blow into the tube, the defendant's conduct could be viewed as a refusal to take the test; there was no evidence that the defendant suffered from a physical or medical condition that would prevent the defendant from providing an adequate breath sample. *State v. Stewart*, 286 Ga. App. 542, 649 S.E.2d 525 (2007), cert. denied, 2008 Ga. LEXIS 120 (Ga. 2008).

Refusal by Driver to Submit to Test (Cont'd)

Consent obtained by misleading information. — In a prosecution for driving under the influence, when the defendant was deprived by the totality of the inaccurate, misleading, and/or inapplicable information given to the defendant by the arresting officer of making an informed choice under the implied consent statute, the defendant's refusal to consent to a urine test was rendered inadmissible. *State v. Leviner*, 213 Ga. App. 99, 443 S.E.2d 688 (1994).

Consent obtained by coercion. — Defendant's conviction was properly reversed as the police improperly threatened to obtain a search warrant to obtain blood and urine for testing through a catheter after the defendant invoked the right under the implied consent law to refuse the testing. *State v. Collier*, 279 Ga. 316, 612 S.E.2d 281 (2005).

Refusal of nonresident driver. — Proper implied consent warning as enacted by the legislature was read to the defendant without error, notwithstanding the defendant's contention that the defendant refused to submit to the requested blood test because the defendant did not believe there would be any penalties in the defendant's home state of South Carolina, i.e., that only the defendant's driving privileges in Georgia would be affected. *Wofford v. State*, 234 Ga. App. 316, 506 S.E.2d 656 (1998).

Compelled testing not permitted. — Police do not have the authority to seek a search warrant to compel a defendant to submit blood and urine samples for drug testing after a defendant invoked the right under the implied consent law to refuse the testing. *State v. Collier*, 279 Ga. 316, 612 S.E.2d 281 (2005).

Search warrant obtained after refusal. — Search warrant used to take the defendant's blood after the defendant refused testing was valid under the implied consent statute because the state was permitted to apply for a warrant to perform the test and the officer provided sufficient cause to obtain the warrant for the defendant's blood. *McAllister v. State*, 325 Ga. App. 583, 754 S.E.2d 376 (2014).

Breath test admissible despite initial refusal. — At the time of a defendant's arrest for DUI, the defendant refused to submit to a breath test; after the officer gave the defendant the chance to rescind this refusal, the defendant agreed to take the test in the absence of any threats or inducements. As the officer did not act unreasonably in attempting to induce the defendant to rescind the initial refusal, the test results were admissible. *State v. Quezada*, 295 Ga. App. 522, 672 S.E.2d 497 (2009).

Jury properly instructed that jury could infer that defendant would have tested positive. — Trial judge was authorized to instruct a jury in a defendant's trial for driving under the influence that the jury could infer from the defendant's refusal to submit to state-administered chemical tests of the defendant's blood and breath that the defendant would have tested positively for alcohol. *Blankenship v. State*, 301 Ga. App. 602, 688 S.E.2d 395 (2009).

Designation of Test by Arresting Officer

Arresting officer designates particular chemical test. — Under a theory of implied consent, O.C.G.A. § 40-5-67.1 effectively mandates that a person charged with driving under the influence submit to whichever recognized chemical test (blood, breath, urine, etc.) is designated by the arresting officer. *Steed v. City of Atlanta*, 172 Ga. App. 839, 325 S.E.2d 165 (1984).

O.C.G.A. § 40-5-67.1, read in pari materia with O.C.G.A. §§ 40-5-55 and 40-6-392, authorizes a law enforcement officer to designate the appropriate chemical test to be administered — breath, blood, urine, or other bodily substance — for the detection of the source of impairment as suspected by the officer. *Jordan v. State*, 223 Ga. App. 176, 477 S.E.2d 583 (1996).

Blood or breath testing not prerequisite to requirement for urine sample. — O.C.G.A. § 40-5-67.1, construed with O.C.G.A. §§ 40-5-55 and 40-6-392, does not require blood or breath testing before an officer may require a suspect to provide a urine sample for analysis for the

presence of alcohol, drugs, or marijuana. *State v. Sumlin*, 224 Ga. App. 205, 480 S.E.2d 260 (1997).

Results of test not designated not inadmissible. — When an arresting officer requested a blood test on the citation but a breath test was administered instead by another officer upon oral instructions from a “paddy wagon” driver, the breath test was not inadmissible on the grounds that the test violated the statutory directive that “the requesting law enforcement officer shall designate which of the aforesaid test shall be administered.” *Steed v. City of Atlanta*, 172 Ga. App. 839, 325 S.E.2d 165 (1984) (decided under O.C.G.A. § 40-5-55).

Officer's selection of another test after being dissatisfied with original results. — Once the arresting officer designated that a breath test be administered, the officer did not have the authority to make another selection because the officer was dissatisfied with the results and the defendant had the right to refuse subsequent tests. *State v. Warmack*, 230 Ga. App. 157, 495 S.E.2d 632 (1998).

Miranda warnings are not necessary before requesting additional tests now that the 1998 amendment of O.C.G.A. § 40-5-67.1 authorizes an officer to require additional tests. *State v. Moses*, 237 Ga. App. 764, 516 S.E.2d 807 (1999).

Trial court's suppression of urine test results could not be sustained on the ground that Miranda warnings were not given to a DUI arrestee before the arrestee decided to submit to a urine test after taking a breath or blood test. *State v. Coe*, 243 Ga. App. 232, 533 S.E.2d 104 (2000).

An arrestee is not, under Georgia constitutional or statutory law, entitled to Miranda warnings before deciding whether to submit to the state's request for an additional test of breath, blood, or urine. *State v. Coe*, 243 Ga. App. 232, 533 S.E.2d 104 (2000).

Practice and Procedure

No requirement to prove age if proper warning given and acknowledged. — O.C.G.A. § 40-5-67.1(b) specifies two different implied-consent notices based on whether a driving under the

influence suspect is age 21 or over; when the defendant specifically stipulated at trial that the police officer read the correct warning, whether the state properly proved that the defendant was over 21 was irrelevant. *Ahn v. State*, 255 Ga. App. 547, 565 S.E.2d 823 (2002).

DUI arrestee had no standing to challenge statute. — Plaintiff, whose license was confiscated by the officer at the time of arrest for DUI and who was issued a citation allowing plaintiff to drive pending resolution of plaintiff's case, did not have standing to challenge the administrative suspension procedures established by O.C.G.A. § 40-5-67.1. *McGraw v. State*, 230 Ga. App. 843, 498 S.E.2d 314 (1998).

No requirement advising test results can be used at trial. — Required warnings for breath test under O.C.G.A. § 40-5-67.1 does not include language advising that the test results could be used in a trial. *St. Germain v. State*, 255 Ga. App. 864, 567 S.E.2d 107 (2002).

Challenge to procedures used in reading to the defendant the statutory implied consent warning and the proper working of the Intoxilyzer 5000 machine should have been appropriately raised by a motion in limine, not a motion to suppress. *Goddard v. State*, 244 Ga. App. 730, 536 S.E.2d 160 (2000).

Service requirements met. — Trial court erred in substituting the court's judgment for that of the Georgia Department of Motor Vehicle Services and in setting aside a driver's license suspension because an officer complied with O.C.G.A. § 40-5-67.1(f)(1) by handing the driver a copy of the DPS Form 1205 when the driver was arrested. *Davis v. Brown*, 274 Ga. App. 48, 616 S.E.2d 826 (2005).

Failure to hold hearing within 30 days. — Failure to hold a hearing within the 30-day period provided for in former § 40-5-55(d) (see now subsection (g) of O.C.G.A. § 40-5-67.1) did not warrant dismissal of the charges under the implied consent law. That provision was not mandatory but directory. *Hardison v. Fayssoux*, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

Family emergency causing failure to make timely response. — When the

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driver left Georgia shortly after the driver received notification of suspension of the driver's license and the right to a hearing in order to travel to another state to take care of the driver's daughter following surgery, this unfortunate family emergency did not rise to the level of a legal excuse for failing to respond within the mandatory time period. *Earp v. Harris*, 191 Ga. App. 414, 382 S.E.2d 156 (1989) (decided under O.C.G.A. § 40-5-55).

Mailing request for hearing. — Date on which a document is postmarked, rather than the date on which a document is mailed, is determinative of the document's timeliness; thus, in deciding whether the mailing of a request for a hearing was made within the time limit of O.C.G.A. § 40-5-67.1(g), the trial court erred in determining that the date on which the document was mailed was controlling. *Department of Pub. Safety v. Ramey*, 215 Ga. App. 334, 450 S.E.2d 332 (1994).

Instruction based upon § 40-5-55(a). — In a prosecution for driving under the influence of alcohol, since there was no jury question as to consent, an instruction to the jury based upon former Code 1933, § 68B-306(a) was in error, but it was harmless error. *Hardeman v. State*, 147 Ga. App. 120, 248 S.E.2d 189 (1978) (decided under former Code 1933, § 68B-306; see O.C.G.A. § 40-5-55(a)).

Charge including the first sentence of O.C.G.A. § 40-5-55(a) was not prejudicial. *Trotter v. State*, 179 Ga. App. 314, 346 S.E.2d 390 (1986); *Brantley v. State*, 199 Ga. App. 623, 405 S.E.2d 533, cert. denied, 199 Ga. App. 905, 405 S.E.2d 533 (1991).

"Voluntariness" charge not required. — Trial court did not err in refusing appellant's request to charge on the "voluntariness" of appellant's consent to a scientific testing of appellant's bodily fluids. *Kirkland v. State*, 206 Ga. App. 27, 424 S.E.2d 638 (1992).

Implied consent. — State was not required to prove the defendant's compliance with the mandatory language of O.C.G.A. § 40-5-67.1 since the defendant had expressly stipulated that "implied

consent was given." *Gill v. State*, 229 Ga. App. 462, 494 S.E.2d 259 (1997).

Independent test upon request. — Although the police officer fulfilled the officer's duty of reading to the defendant the applicable implied consent notice about submitting to state-administered chemical tests for the purpose of determining if the defendant was under the influence of alcohol, the failure to administer the independent urine test that the defendant requested pursuant to that notice meant that the state-administered breath test was inadmissible to support the defendant's DUI conviction. *Johnson v. State*, 261 Ga. App. 633, 583 S.E.2d 489 (2003).

Arresting officer did not make a reasonable effort to accommodate a defendant's request for an independent blood test by qualified personnel of the defendant's own choosing, as required under O.C.G.A. §§ 40-5-67.1(b)(2) and 40-6-392(a)(3), because the officer unilaterally chose the location for the independent test. *State v. Metzger*, 303 Ga. App. 17, 692 S.E.2d 687 (2010).

Erroneous admission of test results. — When an officer failed to read appropriate warnings to the defendant, it was error to admit results of the defendant's breath tests, even though the defendant had stipulated to the facts that would be demonstrated by the results of the tests, i.e., that the defendant had a blood alcohol level of .207. *Richards v. State*, 269 Ga. 483, 500 S.E.2d 581 (1998), reversing *Richards v. State*, 225 Ga. App. 777, 484 S.E.2d 683 (1997).

Trial court erred in denying the defendant's motion to suppress the results of a state-administered breath test given after the defendant initially refused to take such a test as there was no evidence that the defendant was asked a second time whether the defendant would consent to the test or that the defendant rescinded the defendant's refusal and thereafter consented. *Howell v. State*, 266 Ga. App. 480, 597 S.E.2d 546 (2004).

Test results admissible. — Trial court did not err in admitting at trial the defendant's failure of the horizontal gaze nystagmus test in a case involving vehicular homicide, driving under the influ-

ence, and other offenses because that evidence was admissible not only because the evidence showed impairment, but also because the evidence tended to prove that the defendant was a less safe driver at the time the van struck and killed the pedestrian. *Cromartie v. State*, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

Because the *Miranda* requirements were not triggered until the defendant's arrest, and after performance of the field sobriety tests, suppression of the test results was not required. *Doyle v. State*, 281 Ga. App. 592, 636 S.E.2d 751 (2006).

Trial court properly denied a defendant's motion to suppress the results of the breath test administered with regard to the defendant's conviction for driving with an unlawful alcohol concentration because the defendant's statement that "I will take a blood test" was not a request for an independent test under the implied consent law but was an attempt to designate which test would be administered by the state, which was not an option for the defendant; further, the officer's response to the defendant merely clarified the designation that the state-administrated test would be a breath test and did not mislead the defendant regarding the defendant's right to have an independent chemical test. *Anderton v. State*, 283 Ga. App. 493, 642 S.E.2d 137 (2007).

The trial court did not err in denying the defendant's motion in limine to suppress the results of a state-administered breath test as an officer's implied consent warning was substantively accurate so as to allow the defendant to make an informed decision about whether to consent to the test, and solely referred to the defendant's privilege to drive within the state of Georgia with a Georgia driver's license, and not the defendant's Pennsylvania license; further, the officer's initial statement was nothing more than an attention-grabbing preface, and as such did not constitute a substantive change that altered the meaning of the implied consent notice thereafter recited to the defendant. *McHugh v. State*, 285 Ga. App. 131, 645 S.E.2d 619 (2007).

Trial court did not err in denying the defendant's motion to exclude the results of a state-administered breath test be-

cause a state trooper's initial overstatement of the legal blood alcohol concentration, which the trooper corrected immediately, was not so misleading that it rendered the defendant incapable of making an informed decision about whether to submit to chemical testing; the videotape recording demonstrated that before the trooper read the implied consent notice, the defendant told the trooper that the defendant knew that 0.08 grams was the legal limit applicable to individuals. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Court of appeals did not err in reversing an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3), and thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state-administered breath test. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

Trial court properly denied the defendant's motion to suppress the results of the defendant's breath test because the officer's reading of the implied consent notice was accurate, the officer asked whether the defendant consented, the officer told the defendant to answer yes or no, and the officer's statement, that "as long as you continue to be cool and be cooperative, I'll make the process go by real quick for you," was not coercive or deceptively misleading and did not render defendant incapable of making an informed decision about whether to submit to the breath test. *Miller v. State*, 317 Ga. App. 504, 731 S.E.2d 393 (2012).

Trial court properly denied defendant's motion in limine to exclude evidence that defendant refused chemical testing based on the testimony of a deputy that while in defendant's hospital room, a ticket was written for drunk driving and defendant was advised of the custodial arrest; thus, there was no error in the trial court's

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determination that a reasonable person in defendant's position would not think that they were free to leave at the time the deputy read the implied consent warnings. *Plemmons v. State*, 755 S.E.2d 205, 2014 Ga. App. LEXIS 69 (2014).

Argument based on machine's removal or repair. — Trial court properly refused to suppress evidence of a defendant's chemical breath test; testimony from an officer and proof that a current implied consent card contained the same language as the card used during the defendant's arrest allowed the trial court to conclude that the officer advised the defendant of the defendant's implied consent rights, and as there was evidence that the breath test machine was working properly at the time of the defendant's breath test, any argument regarding the machine's subsequent removal or repair went to the weight of the results, not their admissibility. *Jones v. State*, 285 Ga. App. 352, 646 S.E.2d 323 (2007), cert. denied, 2007 Ga. LEXIS 758 (Ga. 2007).

Trial court did not err in admitting the results of a blood test administered to the defendant in the course of medical treatment as the right to refuse a state-administered test was entirely independent of the state's prerogative, pursuant to a warrant obtained in accordance with the Fourth Amendment, to obtain the results as other evidence of a crime. *Rylee v. State*, 288 Ga. App. 784, 655 S.E.2d 239 (2007).

The trial court did not err in denying the defendant's motion to suppress the results of a blood test as the notice given to the defendant by a state trooper under the implied consent law, O.C.G.A. § 40-5-67.1(a), was sufficiently accurate to permit the defendant to make an informed decision about whether to consent to testing and the evidence failed to show that the defendant requested an independent test. *Collins v. State*, 290 Ga. App. 418, 659 S.E.2d 818 (2008).

In defendant's trial for driving under the influence under 18 U.S.C. §§ 7 and 13 and O.C.G.A. § 40-6-391 and an open container violation under O.C.G.A. § 40-6-253, a motion to suppress evidence

obtained as a result of a Selective Traffic Enforcement Program roadblock was denied because the roadblock reasonably fit within the Fourth Amendment constraints. Implied consent protections did not apply to field sobriety tests because the defendant was not under arrest at the time such tests were performed. *United States v. Howard*, No. CR208-09, 2008 U.S. Dist. LEXIS 72916 (S.D. Ga. Sept. 24, 2008).

Test results can be used for driving offenses. — In a prosecution for driving under the influence of marijuana and driving under the influence of drugs to the extent of being a less safe driver, even though the hospital consent form signed by the defendant was entitled "Request for Alcohol Testing," the test results, which were positive for marijuana, were admissible since the defendant had earlier consented to testing after receiving the required implied consent notice. *State v. Lewis*, 233 Ga. App. 390, 504 S.E.2d 242 (1998).

Test results cannot be used for possession offenses. — Because the implied consent warning did not inform the defendant that evidence from a blood test could be used against the defendant for purposes other than determining if the defendant was "under the influence of alcohol or drugs," test results were properly suppressed in a prosecution of the defendant for possession of cocaine. *State v. Long*, 232 Ga. App. 445, 502 S.E.2d 298 (1998).

Defendant's consent to testing in response to the implied consent warning was given with the understanding that the consent was to determine if the defendant was under the influence for purposes of violations of O.C.G.A. § 40-6-391 and the test results could not be used to support a charge of possession of marijuana. *State v. Lewis*, 233 Ga. App. 390, 504 S.E.2d 242 (1998).

Location of subject matter jurisdiction of appeals. — Both the superior court of the county of residence of the petitioner and the Fulton County Superior Court would have subject matter jurisdiction of appeals arising out of applications of Ga. L. 1968, p. 448. *Burson v. Webb*, 125 Ga. App. 824, 189 S.E.2d 120 (1972) (decided under Ga. L. 1968, p. 448;

see O.C.G.A. § 40-5-67.1).

Due process was not violated by the failure to return the defendant's plastic license following a license suspension hearing which was resolved in the defendant's favor since the rationale for confiscation of the license in the first place was a pending charge under O.C.G.A. § 40-6-391. *Wright v. State*, 228 Ga. App. 717, 492 S.E.2d 581 (1997).

Driver entitled to a hearing. — Trial court could have found that the Georgia Department of Motor Vehicle Safety acted arbitrarily and capriciously and abused the court's discretion in applying the 10-day notice requirement as it could be inferred that the DPS Form 1205 served on a driver was seized by an officer during the driver's arrest; the driver was entitled to a hearing before an administrative law judge, despite the driver's failure to request a hearing within the 10-day time period. *Davis v. Brown*, 274 Ga. App. 48, 616 S.E.2d 826 (2005).

Law enforcement must be aware of

serious injury or fatality. — O.C.G.A. § 40-5-67.1(a) provides the temporal connection not expressly set forth in O.C.G.A. § 40-5-55(a); thus, the officer's request for testing is legally viable under the second contingency of O.C.G.A. § 40-5-55(a), the driver's involvement in a traffic accident resulting in serious injuries or fatalities, only if at the time of the request the driver has been involved in a traffic accident that has resulted in serious injuries or fatalities of which law enforcement is aware. *Snyder v. State*, 283 Ga. 211, 657 S.E.2d 834 (2008).

Out-of-state drivers. — Since the defendant held an out-of-state driver's license and the warning discussed the consequences for a driver's Georgia license, there was no evidence to support a finding that the implied consent notice given to the defendant misrepresented in any manner the "legitimate consequences" of the defendant's refusal to submit to the tests. *State v. Haddock*, 235 Ga. App. 726, 510 S.E.2d 561 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68A-902.1, Ga. L. 1968, p. 448, and Ga. L. 1983, p. 100 are included in the annotations for this Code section.

Time of applicability. — Provisions of the DUI statute which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to the defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52 (decided under Ga. L. 1983, p. 100).

Election of test by driver. — Driver has no election of the chemical test to be administered. 1977 Op. Att'y Gen. No. 77-21 (decided under former Code 1933, § 68A-902.1).

Driver may designate additional chemical test. — It is only with regards to the independent or additional test (as provided for in O.C.G.A. § 40-6-392) that the driver may designate the chemical

test to be administered. 1977 Op. Att'y Gen. No. 77-21 (decided under former Code 1933, § 68A-902.1).

Advise ment of driver's right to additional test. — Driver must be informed of driver's right to an additional test so that the driver may challenge the accuracy of the chemical test administered by the state. 1977 Op. Att'y Gen. No. 77-21 (decided under former Code 1933, § 68A-902.1).

Responsibility of obtaining the additional test rests with the driver. 1977 Op. Att'y Gen. No. 77-21 (decided under former Code 1933, § 68A-902.1).

Arresting officer must execute required affidavit. — Affidavit required as a basis for the suspension of a driver's license for failure to comply with the statute cannot be executed by an officer other than the arresting officer. 1970 Op. Att'y Gen. No. U70-82 (decided under Ga. L. 1968, p. 448).

For legal status and effect of alcolyzer test, see 1972 Op. Att'y Gen. No. 72-46 (decided under Ga. L. 1968, p. 448).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 124 et seq.

Am. Jur. Proof of Facts. — Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 POF3d 229.

Unreliability of the Horizontal Gaze Nystagmus Test, 4 POF3d 439.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 POF3d 459.

ALR. — Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 125 ALR 1459.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 ALR2d 1064.

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver, 72 ALR3d 325.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 ALR3d 572.

Admissibility in criminal case of blood-alcohol test where blood was taken

despite defendant's objections or refusal to submit to test, 14 ALR4th 690.

Destruction of ampoule used in alcohol breath test as warranting suppression of result of test, 19 ALR4th 509.

Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 ALR4th 1112.

Snowmobile operation as DWI or DUI, 56 ALR4th 1092.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal, 68 ALR4th 776.

Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 ALR5th 459.

Operation of mopeds and motorized recreational two-, three-, and four-wheeled vehicles as within scope of driving while intoxicated statutes, 32 ALR5th 659.

Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication-post-Sitz cases, 74 ALR5th 319.

Mental incapacity as justifying refusal to submit to tests for driving while intoxicated, 76 ALR5th 597.

Authentication of organic nonblood specimen taken from human body for purposes of analysis, 78 ALR5th 1.

40-5-67.2. Terms and conditions for suspension of license under subsection (c) of Code Section 40-5-67.1.

(a) Any driver's license required to be suspended under subsection (c) of Code Section 40-5-67.1 shall be suspended subject to the following terms and conditions:

(1) Upon the first suspension pursuant to subsection (c) of Code Section 40-5-67.1 within the previous five years, as measured from the dates of previous arrests for which a suspension was obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for one year. Not sooner than 30 days following the effective date of suspension, the person may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail unless such conviction was a recidivist conviction in which case the restoration fee shall be \$510.00 or \$500.00 when

processed by mail. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee.

(2) Upon the second suspension pursuant to subsection (c) of Code Section 40-5-67.1 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for three years. The person shall be eligible to apply to the department for license reinstatement not sooner than 18 months following the effective date of suspension. Such license shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail unless such conviction was a recidivist conviction in which case the restoration fee shall be \$510.00 or \$500.00 when processed by mail. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee.

(3) Upon the third or subsequent suspension pursuant to subsection (c) of Code Section 40-5-67.1 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for five years. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays the prescribed restoration fee. The driver may apply for a probationary license pursuant to Code Section 40-5-58 after the expiration of two years from the effective date of suspension.

(b) An administrative license suspension pursuant to Code Section 40-5-67.1 shall be counted toward fulfillment of any period of suspension subsequently imposed as a result of a conviction of violating Code Section 40-6-391 which arises out of the same violation for which the administrative license suspension was imposed. An administrative license suspension pursuant to Code Section 40-5-67.1 shall run concurrently with any revocation of such driver's license pursuant to a subsequent determination that such person is a habitual violator.

(c) In all cases in which the department may return a license to a driver prior to the termination of the full period of suspension, the department may require such tests of driving skill and knowledge as it determines to be proper, and the department's discretion shall be

guided by the driver's past driving record and performance, and the driver shall pay a restoration fee of \$210.00 or \$200.00 when processed by mail.

(d) Any other provision of law to the contrary notwithstanding, a driver with no previous conviction for a violation of Code Section 40-6-391 within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest, during the period of administrative suspension contemplated under this chapter, shall be entitled to a limited driving permit as provided in Code Section 40-5-64. (Code 1981, § 40-5-67.2, enacted by Ga. L. 1992, p. 2564, § 6; Ga. L. 1994, p. 1600, § 7; Ga. L. 2000, p. 951, § 5-33; Ga. L. 2000, p. 1457, § 5; Ga. L. 2001, p. 208, §§ 2-4, 3-4; Ga. L. 2005, p. 334, § 17-15.1/HB 501; Ga. L. 2007, p. 47, § 40/SB 103.)

Editor's notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the Code section, shall

become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Law reviews. — For note on 1992 enactment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

Verification of information prior to traffic stop. — Since, in most cases, a driver must wait a minimum of 30 days after the driver's license is suspended before applying for reinstatement and, in some cases, up to five years, a police officer was not required to verify that the information the driver had received within the few weeks preceding a stop regarding the suspension of the driver's license was still accurate before making a brief stop of the car. *State v. Harris*, 236 Ga. App. 525, 513 S.E.2d 1 (1999).

Double jeopardy. — Suspension of a driver's license at an administrative hearing is not punishment, nor is the hearing a

prosecution for the purposes of double jeopardy. *Kirkpatrick v. State*, 219 Ga. App. 307, 464 S.E.2d 882 (1995).

Concurrent suspension. — Implied consent suspensions run concurrently with any habitual violator revocation of a driver's license. *Miles v. Kemp*, 233 Ga. App. 850, 506 S.E.2d 141 (1998).

Credit for implied consent suspensions. — Credit for implied consent suspensions is to be given only against subsequent suspensions under the DUI statute if both were imposed as a result of the same arrest. *Miles v. Kemp*, 233 Ga. App. 850, 506 S.E.2d 141 (1998).

40-5-68. Suspension of licenses by operation of law for failure to complete alcohol or drug program.

Reserved. Repealed by Ga. L. 1997, p. 760, § 21, effective July 1, 1997.

Editor's notes. — This Code Section was based on Code 1981, § 40-5-72, enacted by Ga. L. 1983, p. 1000, § 1; Ga. L. 1990, p. 1154, § 4; Code 1981, § 40-5-68, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 4; Ga. L. 1992, p. 779, § 22; Ga. L. 1992, p. 2564, § 7.

Ga. L. 1997, p. 760, § 1, not codified by

the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Law reviews. — For article commenting on the 1997 repeal of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

40-5-69. Circumstances not affecting suspensions by operation of law.

If a person's driver's license is suspended by operation of law as provided in Code Section 40-5-63, 40-5-67.1, or 40-5-67.2, the fact that the person's driver's license was not physically surrendered to the law enforcement officer at the time the person was charged with violating Code Section 40-6-391 or that the person's driver's license was not retained by the court and forwarded to the department as provided in Code Section 40-5-67 or that the person's driver's license was not forwarded as provided in Code Section 40-5-72 shall not affect such suspension. (Code 1981, § 40-5-73, enacted by Ga. L. 1983, p. 1000, § 1; Code 1981, § 40-5-69, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 8; Ga. L. 1997, p. 760, § 22; Ga. L. 2000, p. 951, § 5-34.)

Editor's notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not

apply to offenses committed prior to that date.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

40-5-70. Suspension of drivers' licenses for failure to show proof of required minimum insurance; hearings; mandatory suspension.

(a) In addition to any other punishment, the driver's license of a person convicted under subsection (a), (b), or (c) of Code Section 40-6-10 shall be suspended for a period of 60 days. The person shall submit the driver's license to the court upon conviction, and the court shall forward the driver's license to the department. After the 60 day suspension period and when the person provides proof of having prepaid a six-month minimum insurance policy and pays a restoration fee of \$210.00 or \$200.00 when processed by mail to the department, the suspension shall terminate and the department shall return the person's driver's license to such person. For a second or subsequent offense

within a five-year period, the suspension period shall be increased to 90 days, and, in addition to the driver's license, such person's license tag and tag registration shall also be suspended for a period of 90 days. The restoration fee for a second or subsequent offense within a five-year period shall be \$310.00 or \$300.00 if paid by mail. The procedures for submission of drivers' licenses to the court and the forwarding of such licenses to the department shall also apply to license tags and tag registrations.

(b) A hearing of contempt of court shall be scheduled for any person refusing to deliver his motor vehicle driver's license and, where applicable, motor vehicle license tag and tag registration to the court after a conviction under subsection (a), (b), or (c) of Code Section 40-6-10 and a warrant shall issue for the arrest of such person.

(c) For the purposes of mandatory suspension of a driver's license for a first violation of subsection (a), (b), or (c) of Code Section 40-6-10, a forfeiture of bail or collateral used to seek a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilty shall be considered a conviction regardless of whether the sentence is suspended, probated, rebated, or revoked. A plea of nolo contendere shall not be considered a conviction under this subsection, but a record of the disposition of the case shall be forwarded by the court to the department for the purposes of counting the plea of nolo contendere as a conviction under subsection (d) of this Code section.

(d) For the purposes of mandatory suspension of a driver's license, license tag, and tag registration for a second or subsequent violation within a five-year period, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction was obtained, of subsection (a), (b), or (c) of Code Section 40-6-10, a forfeiture of bail or collateral used to seek a defendant's appearance in court, the payment of a fine, a plea of guilty, a plea of nolo contendere, a plea of nolo contendere to a previous violation of subsection (a), (b), or (c) of Code Section 40-6-10, or a finding of guilty shall be considered a conviction regardless of whether the sentence is suspended, probated, rebated, or revoked. (Code 1981, § 40-5-70, enacted by Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 23; Ga. L. 2009, p. 679, § 6/HB 160.)

Cross references. — Disposition of traffic offenses in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 13.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "drivers" was substituted for "driver's" in the last sentence of subsection (a) and "subsection

(d)" was substituted for "subsection (b)" in the second sentence of subsection (c).

Editor's notes. — Ga. L. 1990, p. 2048, § 4, effective January 1, 1991, repealed former Code Section 40-5-70, relating to the suspension and reinstatement of driver's licenses for persons convicted of driving under the influence of alcohol or

drugs, incorporated those provisions into Code Section 40-5-63, and enacted present Code Section 40-5-70. Former Code Section 40-5-70 was based on Ga. L. 1983, p. 1000, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 10; Ga. L. 1989, p. 14, § 40; and Ga. L. 1990, p. 1154, § 3.

Administrative rules and regulations. — Reinstatement Procedures for Insurance Suspensions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Rule 375-3-3.16.

JUDICIAL DECISIONS

Verification of information prior to traffic stop. — Since, in most cases, a driver must wait a minimum of 30 days after the driver's license is suspended before applying for reinstatement and, in some cases, up to five years, a police officer was not required to verify that the information the officer had received within the

few weeks preceding a stop regarding the suspension of the driver's license was still accurate before making a brief stop of the car. *State v. Harris*, 236 Ga. App. 525, 513 S.E.2d 1 (1999).

Cited in *Payne v. State*, 209 Ga. App. 780, 434 S.E.2d 543 (1993).

40-5-71. Notice of insurance issuance, renewal, or termination; lapse fee; suspension of license following insurance termination; restricted driving permits.

Reserved. Repealed by Ga. L. 2010, p. 143, § 8, effective May 20, 2010.

Editor's notes. — This Code section was based on Code 1981, § 40-5-71, enacted by Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 6, § 40; Ga. L. 1992, p. 779, § 24; Ga. L. 1992, p. 2785, § 12; Ga. L. 1993, p.

91, § 40; Ga. L. 1993, p. 936, §§ 1, 2; Ga. L. 1994, p. 97, § 40; Ga. L. 1996, p. 453, § 12; Ga. L. 2000, p. 429, § 4; Ga. L. 2000, p. 951, §§ 5-35—5-37; Ga. L. 2002, p. 1024, § 5; Ga. L. 2003, p. 261, § 4.

40-5-72. Forwarding of license, tag, and tag registration to department; notice; penalty.

(a) It is the duty of any person who has his or her driver's license and, where applicable, license tag and tag registration suspended under the provisions of Code Section 40-5-70 or 40-2-137 immediately upon suspension and demand of the department to forward such items to the department.

(b) If such driver's license and, where applicable, license tag and tag registration are not received by the department within ten days following the effective date of suspension, the commissioner shall immediately direct any peace officer to secure possession of the driver's license and, where applicable, license tag and tag registration and return the same to the department. The person whose driver's license and, where applicable, license tag and tag registration have been suspended shall surrender such items to any peace officer upon demand.

(c) Unless otherwise provided in this Code section, notice of the effective date of suspension shall occur when the driver receives actual knowledge or legal notice of the suspension, whichever occurs first. For the purposes of making any determination relating to the return of a suspended motor vehicle driver's license and, where applicable, license tag and tag registration, a period of suspension under Code Section 40-5-70 or 40-2-137 or this Code section shall begin upon the date of conviction adjudicated by the court having jurisdiction.

(d) Any person violating subsection (a) or (b) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 30 days. (Code 1981, § 40-5-72, enacted by Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-38; Ga. L. 2010, p. 143, § 9/HB 1005.)

Editor's notes. — Ga. L. 1990, p. 2048, § 4, effective January 1, 1991, renumbered former Code Section 40-5-72 as Code Section 40-5-68 [repealed] and en-

acted the present Code Section 40-5-72. Former Code Section 40-5-72 related to suspension of licenses for failure to complete alcohol or drug program.

40-5-73. Limited applicability.

The provisions of Code Sections 40-5-70, 40-6-10, and 40-6-11 shall not be applicable to persons operating vehicles which are not required to be registered or licensed in this state. (Code 1981, § 40-5-73, enacted by Ga. L. 1990, p. 2048, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "Code Sections" was substituted for "Code Section" near the beginning.

Editor's notes. — Ga. L. 1990, p. 2048, § 4, effective January 1, 1991, renum-

bered former Code Section 40-5-73, relating to circumstances not affecting suspensions by operation of law, as Code Section 40-5-69 and enacted the present Code Section 40-5-73.

40-5-74. Defacement or alteration of seized license prohibited.

Whenever a person is charged with a violation of the law relating to the operation of motor vehicles resulting in the person's driver's license being seized by a law enforcement officer and forwarded to the court having jurisdiction of the offense or whenever a person is convicted of any offense resulting in the person's driver's license being suspended and forwarded to the department, such driver's license shall not be stapled to any document or in any manner defaced or altered so as to indicate at any time in the future such previous seizure and processing of the license. (Code 1981, § 40-5-74, enacted by Ga. L. 1996, p. 1250, § 6.)

ARTICLE 3A

SUSPENSION OF LICENSE FOR CERTAIN DRUG OFFENSES

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this article, which was designated as Article 3B by Ga. L. 1990, p. 1149, § 1, was renumbered as Article 3A. Former Article 3A, consist-

ing of Code Sections 40-5-67 through 40-5-73 was repealed by Ga. L. 1990, p. 2048, effective January 1, 1991. See note under Article 3 heading.

40-5-75. Suspension of licenses by operation of law.

(a) Except as provided in Code Section 40-5-76, the driver's license of any person convicted of any violation of Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," including, but not limited to, possession, distribution, manufacture, cultivation, sale, transfer of, trafficking in, the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, transfer or traffic in a controlled substance or marijuana, or the law of any other jurisdiction, shall by operation of law be suspended, and such suspension shall be subject to the following terms and conditions:

(1) Upon the first conviction of any such offense, with no arrest and conviction of and no plea of nolo contendere accepted to such offense within the previous five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for not less than 180 days. At the end of 180 days, the person may apply to the department for reinstatement of his or her driver's license. Such license shall be reinstated only if the person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays to the department a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail. For purposes of this paragraph, a plea of nolo contendere by a person to a charge of any drug related offense listed in this subsection shall, except as provided in subsection (c) of this Code section, constitute a conviction;

(2) Upon the second conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the period of suspension shall be for three years, provided that after one year from the date of the conviction, the person may apply to the department for reinstatement of his or her driver's license by submitting proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying to the department a restoration fee of \$310.00 or \$300.00 when such reinstatement is processed by mail. For purposes of this paragraph, a plea of nolo

contendere and all previous pleas of nolo contendere within such five-year period of time shall constitute a conviction; and

(3) Upon the third or subsequent conviction of any such offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, such person's license shall be suspended for a period of five years. At the end of two years, the person may apply to the department for a three-year driving permit upon compliance with the following conditions:

(A) Such person has not been convicted or pleaded nolo contendere to any drug related offense, including driving under the influence, for a period of two years immediately preceding the application for such permit;

(B) Such person submits proof of completion of a licensed drug treatment program. Such proof shall be submitted within two years of the license suspension and prior to the issuance of the permit. Such licensed drug treatment program shall be paid for by the offender. The offender shall pay a permit fee of \$25.00 to the department;

(C) Such person submits proof of financial responsibility as provided in Chapter 9 of this title; and

(D) Refusal to issue such permit would cause extreme hardship to the applicant. For the purposes of this subparagraph, the term "extreme hardship" means that the applicant cannot reasonably obtain other transportation, and, therefore, the applicant would be prohibited from:

(i) Going to his or her place of employment or performing the normal duties of his or her occupation;

(ii) Receiving scheduled medical care or obtaining prescription drugs;

(iii) Attending a college or school at which he or she is regularly enrolled as a student; or

(iv) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner.

At the end of five years from the date on which the license was suspended, the person may apply to the department for reinstatement of his or her driver's license by submitting proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and paying to the department a restoration fee of \$410.00 or \$400.00 when such

reinstatement is processed by mail. For purposes of this paragraph, a plea of *nolo contendere* and all previous pleas of *nolo contendere* within such five-year period of time shall constitute a conviction.

(a.1) Any permittee who is convicted of violating any state law or local ordinance relating to the movement of vehicles or any permittee who is convicted of violating the conditions endorsed on his or her permit shall have his or her permit revoked by the department. Any court in which such conviction is had shall require the permittee to surrender the permit to the court, and the court shall forward it to the department within ten days after the conviction, with a copy of the conviction. Any person whose limited driving permit has been revoked shall not be eligible to apply for a driver's license until six months from the date such permit was surrendered to the department.

(b) Except as provided in Code Section 40-5-76, whenever a person is convicted of possession, distribution, manufacture, cultivation, sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer a controlled substance or marijuana, or driving or being in actual physical control of any moving vehicle while under the influence of such substance in violation of subsection (b) of Code Section 16-13-2, subsection (a), (b), or (j) of Code Section 16-13-30, or Code Section 16-13-33; paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391; or the law of any other jurisdiction, the court in which such conviction is had shall require the surrender to it of any driver's license then held by the person so convicted, and the court shall thereupon forward such license and a copy of its order to the department within ten days after the conviction. The periods of suspension provided for in this Code section shall begin on the date of surrender of the driver's license or on the date that the department processes the conviction or citation, whichever shall first occur.

(c)(1) The decision to accept a plea of *nolo contendere* to a misdemeanor charge of unlawful possession of less than one ounce of marijuana shall be at the sole discretion of the judge. If a plea of *nolo contendere* is accepted as provided in this subsection, the judge shall, as a part of the disposition of the case, order the defendant to attend and complete a DUI Alcohol or Drug Use Risk Reduction Program. The order shall stipulate that the defendant shall complete such program within 120 days and that the defendant shall submit evidence of such completion to the department. The judge shall also notify the defendant that, if he or she fails to complete such program by the date specified in the court's order, his or her driver's license shall be suspended, by operation of law, as provided in this Code section. The record of the disposition of the case shall be forwarded to the department.

(2) If a plea of *nolo contendere* is accepted and the defendant's driver's license has not been suspended under any other provision of

this title and if the defendant has not been convicted of or has not had a plea of nolo contendere accepted to a charge of violating this Code section within the previous five years, the court shall, subject to paragraph (1) of this subsection, return the driver's license to the person; otherwise, such driver's license shall be forwarded to the department.

(d) Application for reinstatement of a driver's license under paragraph (1) or (2) of subsection (a) of this Code section shall be made on such forms as the commissioner may prescribe and shall be accompanied by proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail. Application for a three-year driving permit under paragraph (3) of subsection (a) of this Code section shall be made on such form as the commissioner may prescribe and shall be accompanied by proof of completion of an approved residential drug treatment program and a fee of \$25.00 for such permit.

(e) Notwithstanding any other provision of this Code section or any other provision of this chapter, any person whose license is suspended pursuant to this Code section shall not be eligible for early reinstatement of his or her license and shall not be eligible for a limited driving permit, but such person's license shall be reinstated only as provided in this Code section or Code Section 40-5-76.

(f) Except as provided in subsection (a) of this Code section, it shall be unlawful for any person to operate any motor vehicle in this state after such person's license has been suspended pursuant to this Code section if such person has not thereafter obtained a valid license. Any person who is convicted of operating a motor vehicle before the department has reinstated such person's license or issued such person a three-year driving permit shall be punished by a fine of not less than \$750.00 nor more than \$5,000.00 or by imprisonment in the penitentiary for not more than 12 months, or both.

(g) Notwithstanding the provisions of Code Section 15-11-606 and except as provided in subsection (c) of this Code section, an adjudication of a minor child as a delinquent child for any offense listed in subsection (a) of this Code section shall be deemed a conviction for purposes of this Code section.

(h) Notwithstanding the provisions of subsection (a) of this Code section, licensed drivers who are 16 years of age who are adjudicated in a juvenile court pursuant to this Code section may, at their option, complete a DUI Alcohol or Drug Use Risk Reduction Program or an assessment and intervention program approved by the juvenile court.

(i) Notwithstanding any other provision of this chapter to the contrary, the suspension imposed pursuant to this Code section shall be in

addition to and run consecutively to any other suspension imposed by the department at the time of the conviction that results in said suspension. If the person has never been issued a driver's license in the State of Georgia or holds a driver's license issued by another state, the person shall not be eligible for a driver's license for the applicable period of suspension following his or her submission of an application for issuance thereof. (Code 1981, § 40-5-75, enacted by Ga. L. 1990, p. 1149, § 1; Ga. L. 1990, p. 1097, § 1.5; Ga. L. 1991, p. 1767, § 1; Ga. L. 1992, p. 779, § 25; Ga. L. 1992, p. 2785, § 13; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 730, §§ 3-5; Ga. L. 1997, p. 143, § 40; Ga. L. 2000, p. 20, § 23; Ga. L. 2000, p. 951, § 5-39; Ga. L. 2004, p. 471, § 7; Ga. L. 2005, p. 334, § 17-16/HB 501; Ga. L. 2006, p. 449, § 11/HB 1253; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2007, p. 117, § 1/HB 419; Ga. L. 2009, p. 679, § 7/HB 160; Ga. L. 2010, p. 932, § 15/HB 396; Ga. L. 2011, p. 355, § 10/HB 269; Ga. L. 2013, p. 222, § 15/HB 349; Ga. L. 2013, p. 294, § 4-47/HB 242.)

The 2013 amendments. — The first 2013 amendment, effective July 1, 2013, substituted “the department” for “the Department of Driver Services” throughout subsection (a); in the introductory paragraph of subsection (a), substituted “Except as provided in Code Section 40-5-76, the” for “The” at the beginning, inserted “Article 2 of Chapter 13 of Title 16,” and inserted quotes around “Georgia Controlled Substances Act,” near the middle; substituted “Except as provided in Code Section 40-5-76, whenever” for “Whenever” at the beginning of subsection (b); and, in subsection (e), inserted “or her” near the middle and added “or Code Section 40-5-76” at the end. See editor’s note for applicability. The second 2013 amendment, effective January 1, 2014, in subsection (g), substituted “Code Section 15-11-606” for “Code Section 15-11-72” near the beginning, and deleted “or an unruly child” following “delinquent child” near the end. See editor’s note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “drug treatment program” was substituted for “drug-treatment program” twice in subparagraph (a)(3)(B).

Pursuant to Code Section 28-9-5, in 1994, in the last sentence of paragraph (a)(1), “drug related” was substituted for “drug-related” and in the first sentence in subsection (b), “paragraph (2), (4), or (6)”

was substituted for “paragraphs (2), (4), or (6).”

Editor’s notes. — Ga. L. 1990, p. 1097, § 2, not codified by the General Assembly, provides that subsection (h) applies to all adjudications on or after July 1, 1990.

Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense.”

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Law reviews. — For annual survey on criminal law and procedure, see 44 Mercer L. Rev. 165 (1992). For article, “Appeal

and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013).

For note on 1990 enactment of this Code

section, see 7 Ga. St. U.L. Rev. 337 (1990). For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 126 (1992).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-5-75 does not violate the due process or equal protection clauses of the United States or Georgia Constitutions. *Quiller v. Bowman*, 262 Ga. 769, 425 S.E.2d 641, cert. denied, 510 U.S. 818, 114 S. Ct. 72, 126 L. Ed. 2d 41 (1993).

Construction with O.C.G.A. § 17-10-7. — Because O.C.G.A. § 40-5-75 is a recidivist statute and not a habitual traffic offense violator statute it should be construed together with the general recidivist statute, O.C.G.A. § 17-10-7, such that multiple counts of a single indictment are deemed as a single conviction. *Bowman v. Griffith*, 204 Ga. App. 851, 420 S.E.2d 795 (1992).

Effect of first offender treatment. — Defendant who is given first offender treatment has not been "convicted" within the meaning of O.C.G.A. § 40-5-75 and mandatory driver's license suspension is not required. *Priest v. State*, 261 Ga. 651, 409 S.E.2d 657 (1991).

Three-year suspension for recidivists. — Trial court did not err by reducing the suspension of the defendant's license to 180 days since it was undisputed that the defendant had no prior conviction of possession of a controlled substance or marijuana and therefore the three-year suspension for recidivists was inapplicable. *Bowman v. Griffith*, 204 Ga. App. 851, 420 S.E.2d 795 (1992).

Verification of information prior to traffic stop. — Since, in most cases, a driver must wait a minimum of 30 days after the driver's license is suspended before applying for reinstatement and, in some cases, up to five years, a police officer was not required to verify that the information the officer received within the few weeks preceding a stop regarding the suspension of the driver's license was still

accurate before making a brief stop of the car. *State v. Harris*, 236 Ga. App. 525, 513 S.E.2d 1 (1999).

Officers knowledge of driver's DUI as probable cause for stop. — Assuming arguendo that the defendant's license was suspended for only 120 days, and the defendant did not have to wait to reapply for reinstatement for 180 days under O.C.G.A. §§ 40-5-63 and 40-5-75, the defendant was pulled over and arrested 122 days after the suspension, which was the first business day on which the defendant could have applied for reinstatement under § 40-5-63(a)(1), and based on that timeline, it was reasonable for the officers to believe the defendant had not yet applied for reinstatement, especially in light of the fact that the officers knew the defendant had not even appeared for the DUI hearing that caused the suspension, thus, the suspended license provided a valid basis for the traffic stop. *United States v. Woods*, No. 09-15555, 2010 U.S. App. LEXIS 13642 (11th Cir. July 2, 2010) (Unpublished).

Application for reinstatement. — Letters to the department that were not on forms prescribed by the commissioner, were not accompanied by proof of completion of a risk reduction program, and were not accompanied by a restoration fee did not constitute applications for reinstatement. *Department of Pub. Safety v. Schueman*, 243 Ga. App. 369, 532 S.E.2d 487 (2000).

After a second conviction of violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-1 et seq., for an application for reinstatement to initiate the start of a new suspension, it is not required that the applicant must be eligible for reinstatement from the prior suspension. *Department of Pub. Safety v. Schueman*, 243 Ga. App. 369, 532 S.E.2d 487 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Additional penalties called for in drug-related felonies and misdemeanors.
O.C.G.A. §§ 15-21-100 and 40-5-75 are 1990 Op. Att’y Gen. No. U90-21.
to be imposed upon convictions for

RESEARCH REFERENCES

ALR. — Validity and application of statute or regulation authorizing revocation or suspension of driver’s license for reason unrelated to use of, or ability to operate, motor vehicle, 18 ALR5th 542.

40-5-76. Restoration or suspension of defendant’s driver’s license or issuance of limited driving permit.

(a) A judge presiding in a drug court division, mental health court division, or veterans court division may order the department to restore a defendant’s driver’s license that has been or should be suspended pursuant to Code Section 40-5-75, suspend such license, or issue a defendant a limited driving permit in accordance with the provisions set forth in subsections (c) and (d) of Code Section 40-5-64 or with whatever conditions the court determines to be appropriate under the circumstances as a reward or sanction to the defendant’s behavior in such court division. The court shall determine what fees, if any, shall be paid to the department for such reward or sanction, provided that such fee shall not be greater than the fee normally imposed for such services.

(b) A judge presiding in any court, other than the court divisions specified in subsection (a) of this Code section, may order the department to restore a defendant’s driver’s license that has been or should be suspended pursuant to Code Section 40-5-75 or issue a defendant a limited driving permit in accordance with the provisions set forth in subsections (c) and (d) of Code Section 40-5-64 if the offense for which the defendant was convicted did not directly relate to the operation of a motor vehicle. The court shall determine what fees, if any, shall be paid to the department for the restoration of such driver’s license or issuance of such limited driving permit, provided that such fee shall not be greater than the fee normally imposed for such services. Such judge may also order the department to suspend a defendant’s driver’s license that could have been suspended pursuant to Code Section 40-5-75 as a consequence of the defendant’s violation of the terms of his or her probation. (Code 1981, § 40-5-76, enacted by Ga. L. 2013, p. 222, § 16/HB 349; Ga. L. 2014, p. 34, § 1-5/SB 365; Ga. L. 2014, p. 79, § 4/SB 320.)

Effective date. — This Code section became effective July 1, 2013. See editor’s note for applicability. 2014 amendment, effective July 1, 2014, designated the existing provisions of this Code section as subsection (a) and added subsection (b). The second 2014 amend-

The 2014 amendments. — The first

ment, effective July 1, 2014, substituted "division, mental health court division, or veterans court division" for "division or mental health court division" in the first sentence of subsection (a).

Editor's notes. — Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 79, § 1/SB 320, not codified by the General Assembly, provides that: "The General Assembly recognizes that veterans have provided and continue to provide an invaluable service

to our country and this state. In connection with a veteran's service, some servicemen and servicewomen have incurred physical, emotional, or mental impairments which cause or contribute to behaviors that may draw a veteran into the criminal justice system. The General Assembly has determined that having dedicated veterans court divisions is important to address the specialized treatment needs of veterans and that there are resources, services, and treatment options that are unique to veterans that may best facilitate a veteran's reentry into society."

Law reviews. — For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013).

ARTICLE 4

RESTORATION OF LICENSES TO PERSONS COMPLETING DEFENSIVE DRIVING COURSE OR ALCOHOL OR DRUG PROGRAM

Cross references. — Clinical evaluation and substance abuse treatment programs for certain offenders, § 40-5-63.1.

Administrative rules and regulations. — Alcohol and Drug Awareness Program, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services,

Driver Training and Driver Improvement, Chapter 375-5-4.

DUI Alcohol or Drug Use Risk Reduction Program, Official Compilation of the Rules and Regulation of the State of Georgia, Department of Human Services, Mental Health, Developmental Disabilities, and Addictive Diseases, Chapter 290-4-10.

OPINIONS OF THE ATTORNEY GENERAL

Georgia Driver Improvement Act (see O.C.G.A. § 40-5-80 et seq.) acts as an additional method for restoration of licenses suspended or revoked by the

state and does not preclude a judge from requiring a defendant to attend a local driver improvement school. 1978 Op. Att'y Gen. No. U78-49.

RESEARCH REFERENCES

ALR. — Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, for reinstatement of suspended or revoked driver's license, 2 ALR5th 725.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, 18 ALR5th 542.

40-5-80. Purpose of article.

The purpose of this article, the "Georgia Driver Improvement Act," is to improve and promote greater safety upon the highways and streets of this state; to improve the attitude and driving habits of drivers who accumulate traffic accident and motor vehicle conviction records; and to provide uniform DUI Alcohol or Drug Use Risk Reduction Programs for the rehabilitation of persons identified as reckless or negligent drivers and frequent violators. In carrying out this purpose, the Department of Driver Services shall:

(1) Charge a fee for the consideration of applications for approval of driver improvement clinics and instructors. The amount of this fee shall be established by the commissioner and shall, as best as the commissioner shall determine, approximate the expense incurred by the department in consideration of an application. These licenses and each renewal thereof shall be valid for a period of four years unless suspended or revoked prior to the expiration of that time period; and

(2) Require, in addition to the criteria established by the commissioner for approval of driver improvement clinics and certification of DUI Alcohol or Drug Use Risk Reduction Programs, as provided in subsections (a) and (e) of Code Section 40-5-83, respectively, that every driver improvement clinic and DUI Alcohol or Drug Use Risk Reduction Program shall, as a condition of approval or certification, provide a continuous surety company bond for the protection of the contractual rights of students in such form as will meet with the approval of the department and written by a company authorized to do business in this state. The principal sum of the bond shall be established by the commissioner; however, in no event shall the amount of the bond be less than \$10,000.00 per location, and a single bond at such rate may be submitted for all locations under the same ownership. If at any time said bond is not valid and in force, the license of the driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program shall be deemed suspended by operation of law until a valid surety company bond is again in force. (Code 1933, § 68D-101, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1990, p. 1154, § 5; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 14; Ga. L. 1994, p. 1066, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 2000, p. 951, § 5-40; Ga. L. 2003, p. 796, § 2; Ga. L. 2005, p. 334, § 17-17/HB 501; Ga. L. 2014, p. 710, § 1-13/SB 298.)

The 2014 amendment, effective July 1, 2014, in paragraph (2), in the first sentence, inserted "certification of" near the beginning, inserted "respectively," near the middle, inserted "or certification"

in the middle, and deleted a comma following "the department" near the end; substituted "shall the amount of the bond" for "shall this amount" in the second sentence; and substituted "driver improve-

ment clinic or DUI Alcohol or Drug Use Risk Reduction Program" for "clinic or program" in the last sentence.

40-5-81. Program optional; certification and approval of courses.

(a) Any defensive driving course or defensive driving program at which attendance is required by court order shall conform to the requirements of this article. When a defensive driving course, defensive driving program, or DUI Alcohol or Drug Use Risk Reduction Program is required by a court having jurisdiction over misdemeanor traffic law offenses or by any prosecuting attorney thereof, such course or program shall be certified or approved by the department under the provisions of Code Sections 40-5-82 and 40-5-83, as applicable. Certificates of completion from unlicensed defensive driving courses shall not be recognized for any purposes under this article

(b) Whenever any person is authorized or required to attend a driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program as a condition of any sentence imposed under this title or any ordinance enacted pursuant to this title or as a condition of the retention or restoration of the person's driving privilege, such person, in complying with such condition, shall be authorized to attend any driver improvement clinic approved under this article or DUI Alcohol or Drug Use Risk Reduction Program certified under this article; and no judicial officer, probation officer, law enforcement officer, or other officer or employee of a court or person who owns, operates, or is employed by a private company which has contracted to provide private probation services for misdemeanor cases shall specify, directly or indirectly, a particular driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program which the person may or shall attend. This Code section shall not prohibit any judicial officer, probation officer, law enforcement officer, or other officer or employee of a court or owner, operator, or employee of a private company which has contracted to provide probation services for misdemeanor offenders from furnishing any person, upon request, the names of approved driver improvement clinics or certified DUI Alcohol or Drug Use Risk Reduction Programs.

(c) It shall be unlawful for the owner, agent, servant, or employee of any driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program licensed by the department to directly or indirectly solicit business by personal solicitation on public property, by phone, by e-mail, or by mail. A violation of this subsection shall be a misdemeanor. Advertising in any mass media, including, but not limited to, newspapers, radio, television, magazines, Internet, or telephone directories, by a driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction

Program shall not be considered a violation of this subsection. (Code 1933, § 68D-102, enacted by Ga. L. 1978, p. 2302, § 1; Code 1981, § 40-5-85.2, enacted by Ga. L. 1985, p. 758, § 20; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 9; Ga. L. 1992, p. 2785, § 15; Ga. L. 1992, p. 2978, § 9.1; Ga. L. 1993, p. 454, § 1; Ga. L. 2000, p. 951, § 5-41; Ga. L. 2003, p. 796, § 3; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 334, § 17-18/HB 501; Ga. L. 2011, p. 355, § 11/HB 269; Ga. L. 2014, p. 710, § 1-14/SB 298.)

The 2014 amendment, effective July 1, 2014, in subsection (a), substituted “defensive driving course or defensive driving program” for “driver improvement program” in the first sentence; in the second sentence, inserted “, defensive driving program, or DUI Alcohol or Drug Use Risk Reduction Program” near the beginning, substituted “course or program shall be certified or approved” for “course shall be certified and approved” in the middle, and inserted “, as applicable” at the end; in subsection (b), inserted “approved under

this article” in the middle of the first sentence, in the second sentence, substituted “names of approved driver” for “names of certified driver”, and inserted “certified” near the end; and, in subsection (c), inserted “by e-mail,” near the end of the first sentence and, in the third sentence, inserted “Internet,” and inserted a comma following “directories”.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

40-5-82. Administration of program.

(a) The Driver Improvement Program created by this article shall be administered by the commissioner. The commissioner is authorized to promulgate and adopt rules and regulations necessary to carry out this article.

(b) For the purpose of generating greater interest in highway safety, the commissioner may solicit the assistance of local governmental authorities, associations, societies, clubs, schools, colleges, and other organizations or persons knowledgeable in highway safety driving standards to participate in conjunction with the department in the development of local driver improvement programs and in conducting driver improvement classes.

(c) The department is designated as the agency responsible for the certification of DUI Alcohol or Drug Use Risk Reduction Programs and staff. This responsibility includes selection of the assessment instrument, development of the intervention curricula, training of program staff, and monitoring of all DUI Alcohol or Drug Use Risk Reduction Programs under this article.

(d) All DUI Alcohol or Drug Use Risk Reduction Program records including, but not limited to, assessment results and other components attended shall be confidential and shall not be released without the written consent of the DUI offender, except that such records shall be made available to the Department of Behavioral Health and Develop-

mental Disabilities and the Department of Driver Services. The provision of assessments to the Department of Behavioral Health and Developmental Disabilities shall be according to an interagency agreement between the Department of Driver Services and the Department of Behavioral Health and Developmental Disabilities, and the agreement may provide for assessment fees to be transmitted to the Department of Behavioral Health and Developmental Disabilities.

(e) The department shall conduct a records check for any applicant for certification as an operator, director, or instructor of a DUI Alcohol or Drug Use Risk Reduction Program. Each applicant shall submit at least one set of classifiable fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified. No applicant shall be certified who has previously been convicted of a felony. The department shall promulgate rules and regulations regarding certification requirements, including restrictions regarding misdemeanor convictions. No applicant shall be certified unless he or she is a United States citizen, or if not a citizen, he or she presents federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law. (Code 1933, § 68D-103, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 1154, § 6; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1140, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1999, p. 731, § 2; Ga. L. 2000, p. 951, § 5-42; Ga. L. 2005, p. 334, § 17-19/HB 501; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2010, p. 932, § 16/HB 396; Ga. L. 2014, p. 710, § 1-15/SB 298.)

The 2014 amendment, effective July 1, 2014, deleted “approval and” following “responsible for the” in the first sentence of subsection (c).

40-5-83. Establishment and approval of clinics and programs; out-of-state certificates of completion; instructor licenses; fees; operation of clinics by employees of probation division; submission of fingerprints by applicants.

(a)(1) The commissioner shall establish criteria for the approval of driver improvement clinics. To be approved, a clinic shall provide and operate a defensive driving course. Clinics shall be composed of

uniform education and training programs consisting of six hours of instruction designed for the rehabilitation of problem drivers. The commissioner shall establish standards and requirements concerning the contents of defensive driving courses, qualifications of instructors, attendance requirements for students, and examinations. Approved clinics shall charge a fee of \$95.00 for a defensive driving course, except that such clinics may charge different fees of their own choosing if the person is not enrolling in such course pursuant to court order or department requirement. No clinic shall be approved unless such clinic agrees in writing to allow the examination and audit of the books, records, and financial statements of such clinic. Clinics may be operated by any individual, partnership, or corporation. Nothing in this paragraph shall be construed to affect in any way driving programs established for purposes of insurance premium reductions under the provisions of Code Section 33-9-42.

(1.1)(A) No driver improvement clinic shall be permitted to use, adopt, or conduct any business under any name that is like or deceptively similar to any name used by any other driver improvement clinic, Georgia company, or Georgia corporation registered with the Secretary of State. This subparagraph shall not prohibit the franchising or licensing of any part or all of the name of a driver improvement clinic by the owner or the rights thereof to another licensed driver improvement clinic.

(B) This paragraph shall not prohibit the franchising or licensing of any part or all of the name of a clinic by the owner of the rights therein to another licensed driver improvement clinic.

(2) The commissioner may issue a special license to the instructor of any licensed driver training school authorizing such instructor to teach a defensive driving course at a driver improvement clinic approved pursuant to this Code section if such instructor is qualified to teach a teen-age driver education course which consists of a minimum of 30 hours of classroom and six hours of behind-the-wheel training and such instructor certifies to the commissioner that he or she has provided at least 300 hours of behind-the-wheel training in a teen-age driver education course.

(b)(1) The commissioner shall be authorized to accept certificates of completion from all defensive driving, driving under the influence, and alcohol and drug programs, clinics, and courses approved by any other state, the District of Columbia, and territories and possessions of the United States, including military reservations, whereby driver improvement clinics, programs, and courses shall be approved for use by residents of this state, other states, the District of Columbia, and territories and possessions of the United States.

(2) Driver improvement clinics, programs, and courses outside of the State of Georgia shall not be required to comply with the provisions of subsection (a) of this Code section.

(3) Driving under the influence and alcohol and drug programs, clinics, and courses outside of the State of Georgia shall not be required to comply with the provisions of subsection (e) of this Code section; provided, however, that the department shall not accept certificates of completion from any such program, clinic, or course unless said program, clinic, or course has been certified by the department as substantially conforming, with respect to course content, with the standards and requirements promulgated by the department under subsection (e) of this Code section. Certificates of completion from an out-of-state program, clinic, or course not so certified by the department may be accepted only for the purpose of permitting persons who are not residents of the State of Georgia to reinstate nonresident operating privileges.

(c) The commissioner shall be authorized to issue a special license to the instructor of any driver improvement clinic who is qualified to teach the alcohol and drug course prescribed in subsection (b) of Code Section 20-2-142. A driver improvement clinic shall offer such alcohol and drug course only through a qualified instructor and shall not charge a fee for such course of more than \$25.00. The commissioner shall be authorized to issue a special license to a licensed instructor of any driver training school to teach the alcohol and drug course prescribed in subsection (b) of Code Section 20-2-142 who is qualified to teach a teen-age driver education course, which course consists of a minimum of 30 hours of classroom and six hours of behind-the-wheel training. The alcohol and drug program may be included in the 30 hours of classroom training as part of a curriculum approved by the department. Any fee authorized by law for such a drug and alcohol course may be included in the tuition charge for a teen-age driver education course. Any text or workbook provided or required by the Department of Driver Services for such alcohol and drug course shall be provided by the department at the same fee as currently charged by the department to any public or private school, contractor, or appropriate representative currently teaching the program.

(d) Notwithstanding the provisions of any law or rule or regulation which prohibits any individual who is a probation officer or other official or employee of the probation division of the Department of Corrections or a spouse of such individual from owning, operating, instructing at, or being employed by a driver improvement clinic, any individual who is a probation officer or other official or employee of the probation division of the Department of Corrections or a spouse of such individual who owns, operates, instructs at, or is employed by a driver improvement clinic on

June 1, 1985, and who in all respects is and remains qualified to own, operate, instruct at, or be employed by a driver improvement clinic is expressly authorized to continue on and after June 1, 1985, to engage in such activities. No person who owns, operates, or is employed by a private company which has contracted to provide probation services for misdemeanor cases shall be authorized to own, operate, be an instructor at, or be employed by a driver improvement clinic or a DUI Alcohol or Drug Use Risk Reduction Program.

(e)(1) The department is designated as the agency responsible for establishing criteria for the certification of DUI Alcohol or Drug Use Risk Reduction Programs. An applicant shall meet the certification criteria promulgated by the department through its standards and shall provide assessment component services and intervention component services. A certified DUI Alcohol or Drug Use Risk Reduction Program shall require that a risk assessment component be conducted prior to administering the intervention component of such program. A certified DUI Alcohol or Drug Use Risk Reduction Program may include a clinical evaluation component after an individual completes risk assessment and intervention services. Only clinical evaluators licensed by the Department of Behavioral Health and Developmental Disabilities shall be qualified to conduct clinical evaluations. The department is designated as the agency responsible for establishing rules and regulations concerning the contents and duration of the components of DUI Alcohol or Drug Use Risk Reduction Programs, qualifications of instructors, attendance requirements for students, examinations, and program evaluations. Qualified instructors shall be certified for periods of four years each, which may be renewed.

(2) Certified DUI Alcohol or Drug Use Risk Reduction Programs shall charge a fee of \$100.00 for the assessment component and \$235.00 for the intervention component. An additional fee for required student program materials shall be established by the department in such an amount as is reasonable and necessary to cover the cost of such materials.

(3) No DUI Alcohol or Drug Use Risk Reduction Program shall be certified unless such program agrees in writing to submit reports as required in the rules and regulations of the department and to allow the examination and audit of the books, records, and financial statements of such DUI Alcohol or Drug Use Risk Reduction Program by the department or its authorized agent.

(4) DUI Alcohol or Drug Use Risk Reduction Programs may be operated by any public, private, or governmental entity; provided, however, that, except as otherwise provided in this subsection, in any political subdivision in which a DUI Alcohol or Drug Use Risk

Reduction Program is operated by a private entity, whether for profit or nonprofit, neither the local county board of health nor any other governmental entity shall fund any new programs in that area. Programs in existence prior to July 1, 1990, which are operated by local county boards of health or any other governmental entities shall be authorized to continue operation. New programs may be started in areas where no private DUI Alcohol or Drug Use Risk Reduction Programs have been made available in the political subdivision.

(5) The Department of Corrections shall be authorized to operate DUI Alcohol or Drug Use Risk Reduction Programs in its facilities where offenders are not authorized to participate in such programs in the community, provided that such programs meet the certification criteria promulgated by the Department of Driver Services. All such programs operated by the Department of Corrections shall be exempt from all fee provisions established in this subsection specifically including the rebate of any fee for the costs of administration.

(6) No DUI Alcohol or Drug Use Risk Reduction Program shall be certified unless such program agrees in writing to pay to the state, for the costs of administration, a fee of \$30.00 for each offender assessed, provided that nothing in this Code section shall be construed to allow the department to retain any funds required by the Constitution to be paid into the state treasury; and provided, further, that the department shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such miscellaneous funds.

(f)(1) Each applicant for certification to own or operate a driver improvement clinic shall submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified.

(2) No applicant shall be certified unless he or she is a United States citizen, or if not a citizen, he or she presents federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law. (Code 1933, § 68D-104, enacted by Ga. L. 1978, p. 2302, § 1; Code 1981, § 40-5-83.1, enacted by Ga. L. 1983, p. 745, § 3; Ga. L. 1985, p. 409,

§ 1; Ga. L. 1985, p. 758, § 12; Code 1981, § 40-5-85.1, enacted by Ga. L. 1985, p. 758, § 20; Ga. L. 1986, p. 839, § 2; Ga. L. 1987, p. 431, § 1; Ga. L. 1990, p. 1154, § 7; Code 1981, § 40-5-83, as redesignated by Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1140, § 2; Ga. L. 1992, p. 913, § 1; Ga. L. 1992, p. 2785, § 16; Ga. L. 1993, p. 91, § 40; Ga. L. 1993, p. 454, § 2; Ga. L. 1994, p. 1066, § 2; Ga. L. 1997, p. 143, § 40; Ga. L. 1999, p. 731, § 3; Ga. L. 2000, p. 951, § 5-43; Ga. L. 2003, p. 796, § 4; Ga. L. 2005, p. 334, § 17-20/HB 501; Ga. L. 2009, p. 65, § 6/SB 196; Ga. L. 2010, p. 932, § 17/HB 396; Ga. L. 2011, p. 355, § 12/HB 269; Ga. L. 2014, p. 710, §§ 1-16, 5-1/SB 298.)

The 2014 amendment, effective July 1, 2014, in paragraph (a)(1), inserted “defensive driving” in the fourth sentence and substituted “\$95.00” for “\$75.00” in the fifth sentence; in paragraph (a)(2), substituted “licensed driver” for “commercial driver” near the beginning, substituted “course at a driver improvement clinic approved” for “course, advanced defensive driving course, or professional defensive driving course of a driver improvement clinic provided” near the middle, and substituted “300 hours” for “250 hours” near the end; designated the existing provisions of subsection (e) as paragraphs (e)(1) through (e)(6); in paragraph (e)(1), substituted “certification” for “approval” in the first sentence, in the second sentence, substituted “shall provide assessment component services and intervention component services.” for “shall provide the following services: (1) the assessment component and (2) the intervention component”, and added the third through fifth sentences; in paragraph (e)(2), substituted “Certified” for “Approved” at the beginning, substituted “\$100.00” for “\$82.00”, and substituted “\$235.00” for

“\$190.00” in the first sentence; in paragraphs (e)(3) and (e)(6), substituted “shall be certified unless such program” for “shall be approved unless such clinic” near the beginning; in paragraph (e)(4), substituted “in existence prior to July 1, 1990,” for “currently in existence” near the beginning of the second sentence and substituted “available in the political subdivision” for “available to said community” at the end of the last sentence; substituted “shall be authorized” for “is authorized” near the beginning of paragraph (e)(5); and, in paragraph (e)(6), substituted “\$30.00” for “\$22.00”, deleted “or each offender attending for points reduction” following “offender assessed” near the middle, and deleted “so as” following “shall be construed” in the middle.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, subsection (c), as enacted by Ga. L. 1990, p. 1154, § 7, has been renumbered as subsection (e), since Ga. L. 1990, p. 2048, § 4, also added subsections (c) and (d).

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

OPINIONS OF THE ATTORNEY GENERAL

State probation officer as owner or operator. — If a state probation officer is an owner of or instructor in a driver improvement school approved pursuant to O.C.G.A. § 40-5-83, a conflict of interest arises. 1984 Op. Att’y Gen. No. U84-29.

Court officer or employee as owner or instructor. — Conflict of interest would exist if a sheriff, deputy sheriff, law enforcement officer, superior court judge, state court judge, or any other officer or

employee of the court were to be an instructor, owner, or registrar of a state approved driver improvement school. 1984 Op. Att’y Gen. No. U84-29.

Program director of state mental health center as owner. — Program director for alcohol and drug abuse services for a state mental health center does not necessarily have an impermissible conflict of interest as an owner of a driver improvement clinic approved pursuant to

O.C.G.A. § 40-5-83. 1984 Op. Att'y Gen.
No. U84-53.

40-5-83.1. Special licenses for driver improvement clinic instructors qualified to teach alcohol and drug course; clinic course offering.

Repealed by Ga. L. 1990, p. 2048, § 4, effective January 1, 1991.

Editor's notes. — This Code section was based on Ga. L. 1983, p. 745, § 3; Ga. L. 1986, p. 839, § 2. For present provisions, see subsection (c) of Code Section 40-5-83.

40-5-84. Reinstatement of licenses suspended for certain offenses or for points.

(a) Except as otherwise provided, the license of any person whose license is suspended for the first time as a result of the conviction of an offense listed in Code Section 40-5-54 shall, at the expiration of 120 days following the date the license is suspended, be reinstated by the department upon receipt by the department of a certificate of completion of an approved defensive driving course and the payment of a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail.

(b) The license of any person whose license is suspended for the second time as a result of the conviction of an offense listed in Code Section 40-5-54 shall, at the expiration of 120 days following the date the license is suspended, be reinstated by the department upon receipt by the department of a certificate of completion of a defensive driving course approved by the department and the payment of a restoration fee of \$310.00 or \$300.00 when such reinstatement is processed by mail.

(c) The license of any person whose license is suspended for the first time within a five-year period as a result of the assessment of points pursuant to Code Section 40-5-57 shall be reinstated by the department immediately upon receipt by the department of a certificate of completion of an approved defensive driving course and the payment of a restoration fee of \$210.00 or \$200.00 when such reinstatement is processed by mail.

(d) The license of any person whose license is suspended for the second time within a five-year period as a result of the assessment of points pursuant to Code Section 40-5-57 shall be reinstated by the department immediately upon receipt by the department of a certificate of completion of an approved defensive driving course and the payment of a restoration fee of \$310.00 or \$300.00 when such reinstatement is processed by mail.

(e) The license of any person whose license is suspended for the third or subsequent time within a five-year period as a result of the

assessment of points pursuant to Code Section 40-5-57 shall be reinstated by the department upon receipt by the department of a certificate of completion of a defensive driving course approved by the department and the payment of a restoration fee of \$410.00 or \$400.00 when such reinstatement is processed by mail. (Code 1933, § 68D-105, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1983, p. 1000, § 8; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 13; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 17; Ga. L. 2003, p. 796, § 5; Ga. L. 2009, p. 679, § 8/HB 160; Ga. L. 2011, p. 355, § 13/HB 269; Ga. L. 2014, p. 710, § 1-17/SB 298.)

The 2014 amendment, effective July 1, 2014, near the middle of subsections (b) and (e), substituted “completion of a de-

fensive driving course approved by the department” for “completion of an advanced defensive driving course”.

JUDICIAL DECISIONS

Verification of information prior to traffic stop. — Since, in most cases, a driver must wait a minimum of 30 days after the driver’s license is suspended before applying for reinstatement and, in some cases, up to five years, a police officer was not required to verify that the infor-

mation the officer received within the few weeks preceding a stop regarding the suspension of the driver’s license was still accurate before making a brief stop of the car. *State v. Harris*, 236 Ga. App. 525, 513 S.E.2d 1 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 332 et seq., 346 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic, § 988 et seq.

40-5-85. Reinstatement of licenses suspended for driving under influence of alcohol or drugs; red stripe on licenses of repeat offenders.

Notwithstanding any other provision of this chapter, any person convicted within five years of his or her first conviction as measured in paragraph (2) of subsection (c) of Code Section 40-6-391 for a second time of the offense of driving under the influence of alcohol or drugs in violation of Code Section 40-6-391 shall, upon compliance with all other requirements for reinstatement of his or her license as provided for in this chapter, be issued a driver’s license which may bear a red stripe thereon. After seven years with no additional convictions for driving under the influence of alcohol or drugs any such person shall be issued a regular driver’s license without such red stripe provided that he or she is otherwise entitled to such license under the laws of this state. (Code 1981, § 40-5-85, enacted by Ga. L. 1996, p. 1624, § 8.)

Editor's notes. — The former Code section, relating to the reinstatement of licenses suspended for driving under the influence of alcohol or drugs, was based on Code 1933, § 68D-106; Ga. L. 1978, p.

2302, § 1; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1983, p. 1000, § 9; Ga. L. 1990, p. 2048, § 4 and was repealed by Ga. L. 1992, p. 2564, § 10, effective January 1, 1993.

40-5-85.1. Driver improvement clinic ownership, operation, instruction, or employment by Department of Corrections employee or spouse.

Repealed by Ga. L. 1990, p. 2048, § 4, effective January 1, 1991.

Editor's notes. — This Code section was based on Ga. L. 1985, p. 758, § 20. For present comparable provisions relating to

driver improvement clinic ownership, see subsection (b) of Code Section 40-5-81 and subsection (d) of Code Section 40-5-83.

40-5-85.2. Attendance authorized at any driver improvement clinic or program certified under this article.

Repealed by Ga. L. 1990, p. 2048, § 4, effective January 1, 1991.

Editor's notes. — This Code section was based on Ga. L. 1985, p. 758, § 20. For present comparable provisions relating to

referrals to driver improvement clinics, see subsection (b) of Code Section 40-5-81.

40-5-86. Reduction of point count upon completion of course.

Upon the accumulation of points pursuant to Code Section 40-5-57, the total number of points accumulated by any driver shall be reduced by seven points, but to not less than zero points, upon the satisfactory completion by such driver of a defensive driving course approved by the department and the submission of a certificate by such driver to the department. The provisions of this Code section shall be available one time only to each driver in any five-year period. (Code 1933, § 68D-107, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1987, p. 1082, § 5; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2105, § 1; Ga. L. 1992, p. 2785, § 18; Ga. L. 2003, p. 796, § 6; Ga. L. 2014, p. 710, § 1-18/SB 298.)

The 2014 amendment, effective July 1, 2014, substituted "driver of a defensive driving course approved by the department" for "driver of an approved defensive driving course" in the first sentence.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

40-5-87. Conditions of article exclusive.

The requirements and conditions of this article and the rules and regulations adopted pursuant to this article shall be the exclusive requirements for restoration of a license under this article or the issuance of a limited driving permit under this article. (Code 1933,

§ 68D-108, enacted by Ga. L. 1978, p. 2302, § 1; Ga. L. 1990, p. 2048, § 4.)

40-5-88. Administrative penalties.

(a) As an alternative to criminal or other civil enforcement, the commissioner of driver services in order to enforce this article or any orders, rules, or regulations promulgated pursuant to this article, may issue an administrative fine not to exceed \$1,000.00 for each violation, whenever the commissioner, after a hearing, determines that any person, firm, or corporation has violated any provisions of this article or any regulations or orders promulgated under this article. Notwithstanding the foregoing, violations that are minor in nature and committed by a person, firm, or corporation shall be punished only by a written reprimand unless the person, firm, or corporation fails to remedy the violation within 30 days, in which case an administrative fine, not to exceed \$250.00, may be issued.

(b) The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person, firm, or corporation who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner of driver services shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this Code section shall be paid into the state treasury. The commissioner of driver services may file, in the superior court (1) wherein the person under order resides; (2) if such person is a corporation, in the county wherein the corporation maintains its principal place of business; or (3) in the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to such commissioner with respect to any violation of this article or any order, rules, or regulations promulgated pursuant to this article. (Code 1981, § 40-5-88, enacted by Ga. L. 1985, p. 758, § 14; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 19; Ga. L. 2000, p. 951, § 5-44; Ga. L. 2003, p. 796, § 7; Ga. L. 2005, p. 334, § 17-21/HB 501.)

ARTICLE 5

IDENTIFICATION CARDS FOR PERSONS WITHOUT DRIVERS' LICENSES

40-5-100. (For effective date, see note.) Department authorized to issue cards; contents; possession of more than one card prohibited; application for identification card renewal.

(a) The department shall issue personal identification cards to all residents as defined in Code Section 40-5-1 who make application to the department in accordance with rules and regulations prescribed by the commissioner. Cards issued to applicants under 21 years of age shall contain the distinctive characteristics of drivers' licenses issued pursuant to Code Section 40-5-26. The identification card shall be similar in form but distinguishable in color from motor vehicle drivers' licenses and may contain a recent color photograph of the applicant and include the following information:

- (1) Full legal name;
- (2) Address of residence;
- (3) Birth date;
- (4) Date identification card was issued;
- (5) Sex;
- (6) Height;
- (7) Weight;
- (8) Eye color;
- (9) (For effective date, see note.) Signature of person identified or facsimile thereof; and
- (10) (For effective date, see note.) Such other information or identification as required by the department; provided, however, that the department shall not require an applicant to submit or otherwise obtain from an applicant any fingerprints or any other biological characteristic or information which uniquely identifies an individual, including without limitation deoxyribonucleic acid (DNA) and retinal scan identification characteristics but not including a photograph, by any means upon application.

(b) The identification card shall be valid for a period of five or eight years, at the option of the applicant, and shall bear the signatures of the commissioner and the Governor and shall bear an identification card number which shall not be the same as the social security number.

(c)(1) No person may possess more than one identification card issued pursuant to this Code section; provided, however, that this subsection shall not be construed to prevent a resident of this state who possesses a driver's license from also possessing an identification card issued under this article.

(2) Except as provided in paragraph (3) of this subsection, each applicant for an identification card shall surrender any identification card or driver's license previously issued by any other state and any identification card previously issued by this state.

(3)(A) Any noncitizen who is eligible for issuance of an identification card pursuant to the requirements of this chapter may be issued an identification card without surrendering any driver's license or identification card previously issued to him or her by any foreign jurisdiction. This exemption shall not apply to a person who is required to terminate any previously issued identification card pursuant to federal law.

(B) The department shall make a notation on the driving record of any person who retains a foreign identification card or driver's license, and this information shall be made available to law enforcement officers and agencies on such person's driving record through the Georgia Crime Information Center.

(4) Willful failure to surrender any such previous driver's license or personal identification card upon application for a new personal identification card will be considered an act of fraud and upon conviction be punished as provided for in Code Section 40-5-125.

(d) An application for identification card renewal may be submitted by:

(1) Personal appearance before the department; or

(2) Subject to rules or regulations of the department which shall be consistent with considerations of public safety and efficiency of service to customers, means other than such personal appearance which may include without limitation by mail or electronically. The department may by such rules or regulations exempt persons renewing identification cards under this paragraph from the surrender requirement in this Code section. (Ga. L. 1973, p. 807, § 1; Ga. L. 1976, p. 1421, § 2; Ga. L. 1984, p. 1674, § 1; Ga. L. 1986, p. 395, § 1; Ga. L. 1988, p. 897, § 4; Ga. L. 1990, p. 1913, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2785, § 20; Ga. L. 1995, p. 920, § 4; Ga. L. 1996, p. 1250, § 7; Ga. L. 1997, p. 1443, § 2; Ga. L. 2000, p. 951, §§ 5-45, 5-46; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 334, § 17-23/HB 501; Ga. L. 2005, p. 1122, § 4/HB 577; Ga. L. 2008, p. 1154, § 5/SB 488; Ga. L. 2010, p. 932, § 18/HB 396; Ga. L. 2014, p. 710, § 7-1/SB 298.)

Delayed effective date. — Paragraphs (a)(9) and (a)(10), as set out above, become effective January 1, 2015. For version of paragraphs (a)(9), (a)(10), and (a)(11) in effect until January 1, 2015, see the 2014 amendment note.

The 2014 amendment, effective January 1, 2015, in subsection (a), deleted former paragraph (a)(9), which read: “Lo-

cation where the identification card was issued;” and redesignated former paragraphs (a)(10) and (a)(11) as present paragraphs (a)(9) and (a)(10), respectively.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, in paragraph (a)(11) (now (a)(10)), a comma was deleted following “limitation” and a comma was added following “photograph”.

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of fingerprint requirement. — Requiring applicants to submit fingerprints does not violate constitutional rights. 1997 Op. Att’y Gen. No. U97-7.

Privacy Act of 1974 (5 U.S.C. § 552a) does not apply to the provisions of O.C.G.A. § 40-5-100 regarding fingerprinting. 1997 Op. Att’y Gen. No. U97-33.

40-5-101. Rules and regulations.

The commissioner shall promulgate rules and regulations under which this article shall be implemented and administered. (Ga. L. 1973, p. 807, § 2; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-47.)

40-5-102. Applicant to furnish proof of birth date.

The department shall require an applicant for an identification card to furnish a birth certificate or other verifiable evidence stating the applicant’s birth date. (Ga. L. 1973, p. 807, § 4; Ga. L. 1990, p. 2048, § 4.)

40-5-103. Fee; issuance period; exceptions for veterans’ or honorary licenses; application for renewal of an identification card.

(a) Except as provided in Code Section 40-5-21.1 and subsections (b) and (c) of this Code section, the department shall collect a fee of \$20.00 for a five-year card and a fee of \$35.00 for an eight-year card, which fee shall be deposited in the state treasury in the same manner as other motor vehicle driver’s license fees.

(a.1) The maximum period for which any identification card shall be issued is eight years.

(b) The department shall collect a fee of \$5.00 for the identification card for all persons who are referred by a nonprofit organization which organization has entered into an agreement with the department whereby such organization verifies that the individual applying for such identification card is indigent. The department shall enter into

such agreements and shall adopt rules and regulations to govern such agreements.

(c) The department shall not be authorized to collect a fee for an identification card from those persons who are entitled to a free veterans' or honorary driver's license under the provisions of Code Section 40-5-36.

(d) The department shall not be authorized to collect a fee for an identification card from any person:

(1) Who swears under oath that he or she desires an identification card in order to vote in a primary or election in Georgia and that he or she does not have any other form of identification that is acceptable under Code Section 21-2-417 for identification at the polls in order to vote; and

(2) Who produces evidence that he or she is registered to vote in Georgia.

This subsection shall not apply to a person who has been issued a driver's license in this state.

(e) The commissioner may by rule authorize incentive discounts where identification cards are renewed by Internet, telephone, or mail. Any person who has previously been issued a driver's license who transitions from such license or applies for an identification card in addition to such license shall be eligible for such incentive discounts.

(f)(1) Every identification card shall be renewed on or before its expiration upon application, payment of the required fee, and, if applicable, satisfactory completion of any other requirements imposed by law.

(2) An application for renewal of an identification card may be submitted by:

(A) Personal appearance before the department; or

(B) Subject to rules or regulations of the department consistent with considerations of public safety and efficiency of service to identification card holders, means other than personal appearance which may include, without limitation, by mail or electronically. The department may by such rules or regulations exempt persons renewing, obtaining, or transitioning to identification cards under this paragraph from any surrender requirement imposed under Georgia law.

(3) Notwithstanding any other provision of this Code section, there shall be no fee whatsoever for replacement of any identification card solely due to a change of the identification card holder's name or

address, provided that such replacement identification card shall be valid only for the remaining period of such original term; and provided, further, that only one such free replacement identification card may be obtained within the period for which the identification card was originally issued. Any application for the replacement of a lost identification card or due to a change in the identification card holder's name or address submitted within 150 days of the expiration of said identification card shall be treated as an application for renewal subject to the applicable fees as set forth in this Code section. (Ga. L. 1973, p. 807, § 3; Ga. L. 1983, p. 461, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 779, § 26; Ga. L. 2000, p. 951, § 5-48; Ga. L. 2005, p. 253, § 66/HB 244; Ga. L. 2005, p. 334, § 17-24/HB 501; Ga. L. 2006, p. 3, § 3/SB 84; Ga. L. 2008, p. 171, § 8/HB 1111; Ga. L. 2010, p. 9, § 1-81/HB 1055; Ga. L. 2010, p. 932, § 19/HB 396; Ga. L. 2011, p. 355, § 14/HB 269.)

Cross references. — Replacement of licenses, state identification cards, and other documents during periods of natural disaster, § 50-1-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, subsection (d), as enacted by Ga. L. 2005, p. 334, § 17-24/HB 501, was redesignated as subsection (e).

Editor's notes. — Ga. L. 2005, p. 253, § 67/HB 244, not codified by the General Assembly, provides for severability.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 145 (2006).

JUDICIAL DECISIONS

Requiring photo ID to vote. — Because it was likely that the voting organizations could prevail on the merits of their claims that the photo identification requirement of O.C.G.A. § 21-2-417 violated the Twenty-Fourth Amendment, a preliminary injunction issued preventing

the statute's enforcement or application; having to buy the photo ID, the cost of which had also increased pursuant to O.C.G.A. § 40-5-103(a), placed a cost on voting. *Common Cause/GA v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005).

40-5-104. False statement in application.

Any person who knowingly makes any false statement in an application for an identification card provided for by this article shall be guilty of a violation of Code Section 16-10-20. (Ga. L. 1973, p. 807, § 5; Ga. L. 1990, p. 2048, § 4; Ga. L. 2002, p. 551, § 5.)

Cross references. — Identity fraud, § 16-9-120 et seq.

Law reviews. — For note on the 2002

amendment of this Code section, see 19 Ga. St. U.L. Rev. 81 (2002).

40-5-105. Application of Code Section 40-5-2.

The provisions of Code Section 40-5-2 regarding the maintenance and disclosure of department records shall apply, where relevant, to those records maintained or received by the department in connection with identification cards issued under this article. (Code 1981, § 40-5-105, enacted by Ga. L. 1997, p. 1446, § 3.)

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 196 (1997).

ARTICLE 6**MISCELLANEOUS OFFENSES AND JURISDICTION OF OFFENSES****RESEARCH REFERENCES**

ALR. — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator, 58 ALR 532; 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375; 53 ALR2d 850.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 ALR3d 280.

40-5-120. Unlawful use of license or identification card; penalties for violations of chapter generally.

It is a misdemeanor for any person to:

(1) Display or cause or permit to be displayed or have in his or her possession any canceled, revoked, or suspended driver's license or personal identification card issued pursuant to Code Section 40-5-100;

(2) Fail or refuse to surrender to the department upon lawful demand any driver's license or personal identification card issued pursuant to Code Section 40-5-100 which has been suspended, revoked, disqualified, or canceled;

(3) Permit any unlawful use of a driver's license or personal identification card issued pursuant to Code Section 40-5-100 issued to such person;

(4) Do any act forbidden or fail to perform any act required by this chapter for which a criminal sanction is not provided elsewhere in this chapter; or

(5) Scan another person's driver's license, permit, or identification card without the person's prior knowledge and consent. If a person

consents to the scanning of his or her driver's license, permit, or identification card, the information collected may be stored and used for any legitimate purpose. Each unlawful act of storage, disclosure, or usage in violation of this paragraph shall be considered a separate violation of this Code section. This prohibition shall not apply to law enforcement officers or any governmental entity that scans a driver's license, permit, or identification card to verify the contents thereof or to gather information for use for any governmental purpose. (Code 1933, § 68B-401, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1989, p. 519, § 14; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 920, § 5; Ga. L. 2010, p. 932, § 20/HB 396.)

Cross references. — Suspension of driver's license for conviction for fraudulent or fictitious use of license, § 40-5-54.

Use of false name or making false statement in application, § 40-5-125.

JUDICIAL DECISIONS

Punishment for failure to carry license. — Legislative intent in reducing the punishment for failure of a licensee to have the licensee's driver's license in the licensee's possession when operating a vehicle to a fine of ten dollars precluded imposition of a sentence to a consecutive 12 months' probation. *Crain v. State*, 197 Ga. App. 729, 399 S.E.2d 289 (1990).

Fines for misdemeanors. — Paragraph (7) (now paragraph (4)) of O.C.G.A. § 40-5-120 makes driving with an expired driver's license (O.C.G.A. § 40-5-20(a)) a misdemeanor; and since misdemeanors may be punished by a fine as high as \$1,000, a fine of \$35.00 is clearly within the statutory limits and not subject to review. *Littlejohn v. State*, 165 Ga. App. 562, 301 S.E.2d 917 (1983).

Nonissuance of citation does not negate reasonableness of stop. — If an officer stops a vehicle in the good faith belief that a traffic violation has been committed, the officer's ultimate failure to issue a traffic citation will not preclude the traffic offense from evincing the reasonable suspicion which served to justify the officer's initial stop of the vehicle. Once a stop is effected, a defendant is subject to custodial arrest for operating a motor vehicle without a valid driver's license. *State v. Chambers*, 194 Ga. App. 609, 391 S.E.2d 657 (1990).

Cited in *Cabral v. White*, 181 Ga. App. 816, 354 S.E.2d 162 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Any misdemeanor offenses arising under paragraph (5) of O.C.G.A. § 40-5-120 are of-

fenses for which those charged are to be fingerprinted. 2010 Op. Att'y Gen. No. 10-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 258 et seq.

40-5-121. Driving while license suspended or revoked.

(a) Except when a license has been revoked under Code Section 40-5-58 as a habitual violator, any person who drives a motor vehicle on any public highway of this state without being licensed as required by subsection (a) of Code Section 40-5-20 or at a time when his or her privilege to so drive is suspended, disqualified, or revoked shall be guilty of a misdemeanor for a first conviction thereof and, upon a first conviction thereof or plea of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be fingerprinted and shall be punished by imprisonment for not less than two days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$500.00 nor more than \$1,000.00. Such fingerprints, taken upon conviction, shall be forwarded to the Georgia Crime Information Center where an identification number shall be assigned to the individual for the purpose of tracking any future violations by the same offender. For the second and third conviction within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such person shall be guilty of a high and aggravated misdemeanor and shall be punished by imprisonment for not less than ten days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$1,000.00 nor more than \$2,500.00. For the fourth or subsequent conviction within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such person shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, and there may be imposed in addition thereto a fine of not less than \$2,500.00 nor more than \$5,000.00.

(b)(1) The department, upon receiving a record of the conviction of any person under this Code section upon a charge of driving a vehicle while the license of such person was suspended, disqualified, or revoked, including suspensions under subsection (f) of Code Section 40-5-75, shall extend the period of suspension or disqualification by six months. Upon the expiration of six months from the date on which the suspension or disqualification is extended and payment of the applicable reinstatement fee, the department shall reinstate the license. The reinstatement fee for a first such conviction within a five-year period shall be \$210.00 or \$200.00 if paid by mail. The reinstatement fee for a second such conviction within a five-year

period shall be \$310.00 or \$300.00 if paid by mail. The reinstatement fee for a third or subsequent such conviction within a five-year period shall be \$410.00 or \$400.00 if paid by mail.

(2) The court shall be required to confiscate the license, if applicable, and attach it to the uniform citation and forward it to the department within ten days of conviction. The period of suspension or disqualification provided for in this Code section shall begin on the date the person is convicted of violating this Code section.

(c) For purposes of pleading *nolo contendere*, only one *nolo contendere* plea will be accepted to a charge of driving without being licensed or with a suspended or disqualified license within a five-year period as measured from date of arrest to date of arrest. All other *nolo contendere* pleas in this period will be considered convictions. For the purpose of imposing a sentence under this subsection, a plea of *nolo contendere* shall constitute a conviction. There shall be no limited driving permit available for a suspension or disqualification under this Code section.

(d) Notwithstanding the limits set forth in Code Section 40-5-124 and in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishment for a misdemeanor or misdemeanor of a high and aggravated nature as applicable and provided for in this Code section upon a conviction of a nonfelony charge of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section. (Code 1933, § 68B-402, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1979, p. 1049, § 1; Ga. L. 1983, p. 1000, § 10; Ga. L. 1984, p. 22, § 40; Ga. L. 1988, p. 897, § 5; Ga. L. 1989, p. 350, § 1; Ga. L. 1989, p. 519, § 15; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 5; Ga. L. 1992, p. 1128, § 1; Ga. L. 1999, p. 391, § 6; Ga. L. 2000, p. 951, § 5-49; Ga. L. 2004, p. 631, § 40; Ga. L. 2006, p. 449, § 12/HB 1253; Ga. L. 2008, p. 1137, § 3/SB 350; Ga. L. 2009, p. 65, § 3/SB 196; Ga. L. 2009, p. 679, § 9/HB 160.)

Cross references. — Provisions regarding operation of motor vehicle during suspension of license, registration, or operating privilege, § 40-9-8.

Editor's notes. — Ga. L. 1999, p. 391, § 2, not codified by the General Assembly,

provides: "This Act shall be known and may be cited as 'Heidi's Law'."

Law reviews. — For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 200 (1999).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1937, p. 322 are included in the annotations for this Code section.

There is no element of criminal in-

tent in a violation of O.C.G.A. § 40-5-121. *King v. State*, 226 Ga. App. 576, 486 S.E.2d 904 (1997).

Habitual violator subject to different sentencing. — Because the equal protection clause of the Fourteenth

Amendment does not deny a state the power to treat different classes of people in different ways, the General Assembly could have reasonably concluded that habitual violators are more dangerous than those who have had their licenses suspended or revoked. Thus, a defendant was not denied equal protection when the defendant was sentenced as a habitual violator under O.C.G.A. § 40-5-58(c) rather than being sentenced under O.C.G.A. § 40-5-121. *Gaines v. State*, 260 Ga. 267, 392 S.E.2d 524 (1990).

Notice to defendant required. — One of the elements of driving while one's license is suspended is notice to the defendant of action in suspending the license, and absent proof by the state of actual or legal notice to the defendant a conviction for that offense cannot be sustained. *Sumner v. State*, 184 Ga. App. 374, 361 S.E.2d 536 (1987); *Farmer v. State*, 222 Ga. App. 591, 474 S.E.2d 760 (1996).

Actual or legal notice to the defendant of the suspension of the defendant's license is an element of the offense of driving while defendant's license is suspended. *State v. Brooks*, 194 Ga. App. 465, 390 S.E.2d 673 (1990).

Notice contemplated by O.C.G.A. § 40-5-60 applies to all suspensions provided for in O.C.G.A. Ch. 5, T. 40, and suspensions under O.C.G.A. § 40-5-57 fall within this class and are not excepted from the general rule. Thus, without proof by the state of actual or legal notice to a defendant of the defendant's license suspension, a conviction under O.C.G.A. § 40-5-121 cannot be sustained. *State v. Fuller*, 289 Ga. App. 283, 656 S.E.2d 902 (2008).

Because there was no evidence that a defendant received notice of the defendant's license suspension for excessive violation points under O.C.G.A. § 40-5-57, a conviction of driving with a suspended license in violation of O.C.G.A. § 40-5-121 was properly reversed. Under O.C.G.A. § 40-5-60, notice of a suspension was required for a conviction, and O.C.G.A. § 40-5-57 did not provide for notice by operation of law. *State v. Fuller*, 289 Ga. App. 283, 656 S.E.2d 902 (2008).

Actual or constructive notice of suspension not within officer's

knowledge. — Though central dispatch advised an officer that the defendant had not been served with notice of suspension of the defendant's license, the officer had probable cause to arrest the defendant for driving under suspension (O.C.G.A. § 40-5-121) as the officer had no way of knowing whether the defendant had obtained actual or constructive notice of the suspension by other means. Thus, drugs found in a search of the defendant's car incident to the arrest were admissible; the trial court's ultimate conclusion that the defendant did not have notice of the suspension did not "retroactively vitiate" the probable cause supporting the arrest. *Johnson v. State*, 297 Ga. App. 254, 676 S.E.2d 884 (2009).

Service date. — Defendant's conviction for driving on a suspended license was reversed since the defendant was never given a uniform citation listing the service date, in contravention of the clear mandate of O.C.G.A. § 40-5-121, nor a copy of the arrest warrant. Defendant's license had been suspended under O.C.G.A. § 40-5-56 for failing to appear at a hearing for a traffic offense. *Mobley v. State*, 253 Ga. App. 57, 557 S.E.2d 488 (2001).

Notice sufficient evidence to convict. — Official notification of the suspension of one's license to drive was sufficient evidence to convict the driver of a violation of former Code 1933, § 68B-402. *Furman v. State*, 144 Ga. App. 824, 242 S.E.2d 746 (1978) (see O.C.G.A. § 40-5-121).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 after a jury found the defendant guilty of driving on a suspended license in violation of O.C.G.A. § 40-5-121(a) because there was some evidence that the defendant was served with notice of suspension pursuant to O.C.G.A. § 40-5-60; the state introduced the defendant's driver's license history report, which showed that the defendant had been served with the notice of the license suspension by a police officer, and the officer testified that the officer served the defendant with the notice. *Sledge v. State*, 312 Ga. App. 97, 717 S.E.2d 682 (2011).

Hearsay evidence not sufficient for conviction. — When the only evidence that the defendant was driving without a license was hearsay from one of the police officers, not covered by one of the exceptions and not otherwise admissible as necessary and demonstrably trustworthy, reversal of the conviction for driving without a license was required. *Day v. State*, 235 Ga. App. 771, 510 S.E.2d 579 (1998).

Corroboration not required for defendant's admission to driving on suspended license. — Defendant's statement to an officer that the defendant's license was suspended was an admission and not a confession requiring corroboration under former O.C.G.A. § 24-3-53 (see now O.C.G.A. § 24-8-823) because the defendant's statement did not include an admission to driving on a highway of the state, which was an essential element of the offense of driving with a suspended license under O.C.G.A. § 40-5-121(a). *Griffin v. State*, 302 Ga. App. 807, 692 S.E.2d 7 (2010).

Technical violations of statute did not render arrest illegal. — Although there may have been technical violations of O.C.G.A. § 40-5-121(b)(1) in an officer's arrest of a driver for driving with a suspended license, the driver's statement that the driver's license was suspended provided the officer with probable cause to arrest, and any violation of § 40-5-121(b)(1) did not render the subsequent search of a van improper. *Agnew v. State*, 298 Ga. App. 290, 680 S.E.2d 141 (2009).

Evidence sufficient for conviction. — See *D'Ambrosio v. State*, 245 Ga. App. 12, 536 S.E.2d 218 (2000), cert. denied, 532 U.S. 962, 121 S. Ct. 1496, 149 L. Ed. 2d 381 (2001).

Evidence that the defendant's license was suspended at the time the defendant was arrested following a high-speed motor vehicle chase with police was sufficient to support defendant's conviction for driving with a suspended license. *Arnold v. State*, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Driving with a suspended license conviction was affirmed after the state proved that the defendant received notice of the defendant's license suspension by introducing the defendant's driving record; an

officer testified that the officer was certified to run driving histories and that the officer obtained a printout of the defendant's driving history from an approved computer terminal at the Georgia Department of Public Safety. *Fannin v. State*, 267 Ga. App. 413, 599 S.E.2d 355 (2004).

Defendant's conviction for improper stopping in violation of O.C.G.A. § 40-6-202 was based on sufficient evidence as the fact that the vehicle was blocking only one lane of traffic, rather than the entire street, was adequate because the vehicle was not legally parked for purposes of § 40-6-202; further, since the defendant was sitting in the driver's seat of the car with a suspended license, which the defendant clearly knew about because the defendant had received citations for driving with a suspended license previously, there was sufficient circumstantial evidence to convict the defendant of driving without a valid license in violation of O.C.G.A. § 40-5-121. *Marsengill v. State*, 275 Ga. App. 840, 622 S.E.2d 58 (2005).

Defendant's conviction of driving a motor vehicle with a suspended license was supported by sufficient evidence as the defendant could not produce a driver's license, and the officer's check on the status of the defendant's license revealed that the license was suspended. *Mayfield v. State*, 276 Ga. App. 544, 623 S.E.2d 725 (2005).

Evidence that the defendant's license was suspended including a written notice given to, signed by, and explained to the defendant, an officer's observation of the defendant driving after the date of that notice, and the defendant's admission to the officer, sufficiently established the elements of driving with a suspended license. *Wilson v. State*, 278 Ga. App. 420, 629 S.E.2d 110 (2006).

Admission that the defendant did not have a driver's license, coupled with the certified copy of the license-suspension notice that was admitted at trial, sufficed to sustain a conviction for driving with a suspended license. *Johnson v. State*, 279 Ga. App. 98, 630 S.E.2d 612 (2006).

Despite a lack of direct evidence to show that the defendant drove the victim's vehicle, a conviction for driving with a sus-

pendent license was upheld as sufficient circumstantial evidence existed that showed the defendant returned the vehicle to the parking lot where the victim left the vehicle running with the keys in the ignition, and the police saw the defendant walking away from the vehicle after doing so. *Wheeler v. State*, 281 Ga. App. 158, 635 S.E.2d 415 (2006).

In a case where the defendant was convicted of driving with a suspended license, there was sufficient evidence that the defendant was driving since: the vehicle involved was owned by a person with whom the defendant lived; the defendant had driven the vehicle on other occasions while the defendant's license was suspended; the vehicle was driven to the defendant's home by a driver whom an officer believed to be the defendant; and after the vehicle was abandoned at the defendant's residence, the defendant arrived on the scene wearing clothes similar to those of the driver. *Williams v. State*, 285 Ga. App. 190, 645 S.E.2d 676 (2007).

Although a police car video of a defendant's traffic stop had poor audio quality resulting in inaudible portions, the defendant's admissions that the defendant's license was suspended were admissible as part of the *res gestae* pursuant to former O.C.G.A. § 24-3-3 (see now O.C.G.A. § 24-8-803). The defendant could attack the weight and credibility of the recording, but not the recording's admissibility; thus, the evidence was sufficient to convict the defendant of driving with a suspended license. *Steed v. State*, 309 Ga. App. 546, 710 S.E.2d 696 (2011).

Defendant's own testimony that the defendant had no license and had knowledge that the defendant's license was suspended and the officer's observation of the defendant exiting the driver's side of the vehicle was sufficient to support the conviction for driving with a suspended license. *Daniels v. State*, 321 Ga. App. 748, 743 S.E.2d 440 (2013).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was sus-

pendent, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. *Armstrong v. State*, 325 Ga. App. 690, 754 S.E.2d 652 (2014).

Effect of premature issuance. — Premature issuance of a driver's license to the defendant was not adequate to show as a matter of law that the defendant's driving privileges had been properly reinstated, nor did that premature issuance refute the evidence that the defendant drove a motor vehicle on a public highway at a time when the defendant's privilege to do so was suspended and before having the defendant's license reinstated when and as permitted by statutory procedure. *Payne v. State*, 209 Ga. App. 780, 434 S.E.2d 543 (1993); *Grisson v. State*, 237 Ga. App. 559, 515 S.E.2d 857 (1999).

Sentence of 30 days in jail for a violation of Ga. L. 1937, p. 322 is lawful. *Bush v. State*, 108 Ga. App. 638, 134 S.E.2d 490 (1963) (decided under Ga. L. 1937, p. 322).

Evidence supported finding that defendant had actual notice that defendant's license was suspended since a police officer had advised defendant, after running a computer check, that the license was suspended. *Arnold v. State*, 189 Ga. App. 900, 377 S.E.2d 918 (1989).

Prosecutorial discretion. — Even if the defendant admitted notice that the defendant had the legal status of a habitual violator, the state was not bound to charge the defendant with a O.C.G.A. § 40-5-58 felony and was not precluded from charging defendant with a O.C.G.A. § 40-5-121 misdemeanor. The decision of whether to prosecute and what charges to file are decisions that rest in the prosecutor's discretion. *Noeske v. State*, 181 Ga. App. 778, 353 S.E.2d 635 (1987).

Prosecutor was fully authorized to charge defendant by accusation, and noth-

ing within O.C.G.A. § 40-5-121 governed the prosecutor's authority to charge the defendant. *Allman v. State*, 258 Ga. App. 792, 575 S.E.2d 710 (2002).

Habitual violator felony status. — It is a misdemeanor for one to drive while one's license is suspended or revoked, but if, pursuant to O.C.G.A. § 40-5-58, the license of the driver had been revoked because the driver was a habitual violator, then the action is considered a more serious offense and constitutes a felony. That is the meaning of the exception contained in subsection (a) of O.C.G.A. § 40-5-121. *Noeske v. State*, 181 Ga. App. 778, 353 S.E.2d 635 (1987).

Lesser included offense of operating motor vehicle after revocation as habitual violator. — Driving with a suspended or revoked license was a lesser included offense of operating a motor vehicle after revocation of one's license as an habitual violator since the defendant had been stopped by the police while operating an automobile on an interstate highway at a time when the defendant's Georgia driver's license was revoked due to the defendant's having been declared a habitual violator. *Parks v. State*, 180 Ga. App. 31, 348 S.E.2d 481 (1986).

Double jeopardy plea when both §§ 40-5-58 and 40-5-121 charged. — After a defendant was convicted of driving with a suspended license in violation of O.C.G.A. § 40-5-121 and was later indicted for a violation of O.C.G.A. § 40-5-58, based upon the defendant's operation of a motor vehicle after defendants had been notified that the defendant had been declared a habitual violator, the trial court was ordered to reconsider the court's denial of the defendant's double-jeopardy plea on grounds that the same conduct established the commission of all crimes. *Whaley v. State*, 260 Ga. 384, 393 S.E.2d 681 (1990).

Attack on underlying conviction in de novo appeal. — In view of an Alabama conviction for driving with a suspended license, the Department of Public Safety notified the driver that their license would be suspended for an additional year, on appeal to the superior court, the driver contended the driver had been improperly convicted because the

driver had not received notice of the suspension before the driver's arrest, and the superior court determined that in fact the driver did not receive notice that the driver's license had been suspended until eight or ten hours after the driver was charged with driving with a suspended license and thus concluded that the additional suspension period was improper, it was held that a collateral attack on an underlying conviction which is used to support a license suspension may not be made in a de novo appeal unless the conviction is void on the conviction's face and the driving with a suspended license conviction in Alabama was not void on the conviction's face. Accordingly, the superior court erred in ruling the license suspension to be improper. *Earp v. Fletcher*, 183 Ga. App. 593, 359 S.E.2d 456 (1987).

Record of suspension properly admitted. — When the defendant was charged with driving with a suspended license, a certified copy of the defendant's notice of suspension prepared in connection with an earlier DUI conviction and a computer printout establishing the date of the suspension were properly admitted under former O.C.G.A. § 24-3-17 (see now O.C.G.A. § 24-9-924). Before the printout was submitted to the jury, the trial court required that the prejudicial information on the printout be redacted. *Hann v. State*, 292 Ga. App. 719, 665 S.E.2d 731 (2008).

Driving on private parking lot. — Conviction for driving with suspended license was reversed since the defendant only drove around a private parking lot, and never drove on a "public highway" as required by statute. *Barrett v. State*, 172 Ga. App. 485, 323 S.E.2d 654 (1984).

Officers knowledge of driver's DUI as probable cause for stop. — Assuming arguendo that the defendant's license was suspended for only 120 days, and the defendant did not have to wait to reapply for reinstatement for 180 days under O.C.G.A. §§ 40-5-63 and 40-5-75, the defendant was pulled over and arrested 122 days after the suspension, which was the first business day on which the defendant could have applied for reinstatement under § 40-5-63(a)(1), and based on that timeline, it was reasonable for the officers

to believe the defendant had not yet applied for reinstatement, especially in light of the fact that the officers knew the defendant had not even appeared for the DUI hearing that caused the suspension, thus, the suspended license provided a valid basis for the traffic stop. *United States v. Woods*, No. 09-15555, 2010 U.S. App. LEXIS 13642 (11th Cir. July 2, 2010) (Unpublished).

Cited in *Elder v. State*, 143 Ga. App. 610, 239 S.E.2d 160 (1977); *Franklin v. Department of Pub. Safety*, 146 Ga. App. 379, 246 S.E.2d 327 (1978); *Ketchum v. State*, 167 Ga. App. 858, 307 S.E.2d 742

(1983); *Schofill v. State*, 183 Ga. App. 251, 358 S.E.2d 651 (1987); *Ward v. State*, 188 Ga. App. 372, 373 S.E.2d 65 (1988); *Freeman v. State*, 195 Ga. App. 357, 393 S.E.2d 496 (1990); *Carter v. State*, 196 Ga. App. 226, 395 S.E.2d 891 (1990); *Gazaway v. State*, 207 Ga. App. 641, 428 S.E.2d 659 (1993); *Woody v. State*, 212 Ga. App. 186, 441 S.E.2d 505 (1994); *Diamond v. State*, 267 Ga. 249, 477 S.E.2d 562 (1996); *Veasey v. State*, 244 Ga. App. 102, 534 S.E.2d 129 (2000); *Cox v. State*, 250 Ga. App. 69, 550 S.E.2d 127 (2001); *Jaheni v. State*, 285 Ga. App. 266, 645 S.E.2d 735 (2007).

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No verification needed that records show date of receipt of notice. — The 1989 amendment to O.C.G.A. § 40-5-121 permits a law enforcement officer to charge a driver with the offense of driving with a suspended license without verifying that the records of the Georgia Department of Public Safety show a date of receipt of an official notice of suspension, but the amendment does not authorize a conviction without proof of receipt of actual or legal notice of the suspension. 1989 Op. Att'y Gen. No. U89-27.

Mandatory imprisonment on first conviction. — O.C.G.A. § 40-5-121 re-

quires a mandatory imprisonment of not less than two days nor more than six months upon the first misdemeanor conviction for driving while a license is suspended, revoked, or disqualified. The sentence may be suspended or probated pursuant to the authority provided in O.C.G.A. § 17-10-1(a). 1992 Op. Att'y Gen. No. U92-10.

Fingerprinting required for violators. — Persons violating O.C.G.A. § 40-5-121 for driving while suspended, disqualified, or revoked should be fingerprinted. 2008 Op. Att'y Gen. No. 2008-6; 2009 Op. Att'y Gen. No. 2009-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 260, 261.

C.J.S. — 60 C.J.S., Motor Vehicles, § 349 et seq.

ALR. — Second offense, in operating vehicle or other instrumentality without proper license or permit, as applied to

several vehicles or instrumentalities owned or operated by same person, 158 ALR 772.

Automobiles: necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 7 ALR5th 73.

40-5-122. Permitting unlicensed person to drive.

No person shall knowingly authorize or permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under this chapter or who is not licensed for the type or class of vehicles to be driven or in violation of any of the provisions of this chapter. (Code 1933, § 68B-404, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1937, p. 322 are included in the annotations for this Code section.

Purpose. — O.C.G.A. § 40-5-122 was intended to protect the public by preventing incompetent, inexperienced, or improper drivers from gaining access to public highways and causing injury and damage thereon. It was not enacted to allow unlicensed drivers to obtain recovery for personal injuries. *Spivey v. Sellers*, 185 Ga. App. 241, 363 S.E.2d 856 (1987).

Effect of international agreement on licensing. — International agreement known as the Convention on Road Traffic supersedes the statutory provisions of the State of Georgia to the extent state statutory provisions are in conflict with the provisions of that agreement. A driver authorized to drive in participating countries pursuant to the agreement is required only to "hold a driving permit." *Schofield v. Hertz Corp.*, 201 Ga. App. 830, 412 S.E.2d 853 (1991), cert. denied, 201 Ga. App. 904, 412 S.E.2d 853 (1992).

Negligent entrustment. — Under the doctrine of negligent entrustment, the entrustor's negligence must concur with the driver's negligence to proximately cause damage to the plaintiff. Unless the plaintiff can prove the driver of the auto-

mobile was negligent, the entrustor's failure to ascertain whether the driver had a valid license is of no consequence. *Schofield v. Hertz Corp.*, 201 Ga. App. 830, 412 S.E.2d 853 (1991), cert. denied, 201 Ga. App. 904, 412 S.E.2d 853 (1992).

Duty to discover "reputation" of driver. — There is no duty on the owner of an automobile to investigate the competency of one to whom the owner lends a car and to discover one's "reputation" as a driver in order to avoid being negligent if it should subsequently be determined that the driver indeed had a reputation for recklessness and incompetency in driving. *Worthen v. Whitehead*, 196 Ga. App. 678, 396 S.E.2d 595 (1990).

Operator driving outside area given to operator by owner. — An owner of an automobile who knowingly permits a vehicle to be operated by an untrained and unlicensed driver who was learning to drive is not relieved of liability for damages resulting from the operator's incompetence by the fact that the operator was driving outside of the area in which the owner had given the operator permission to drive. *Medlock v. Barfield*, 90 Ga. App. 759, 84 S.E.2d 113 (1954) (decided under Ga. L. 1937, p. 322).

Cited in *McCook v. State*, 145 Ga. App. 3, 243 S.E.2d 289 (1978); *Thomason v. Harper*, 162 Ga. App. 441, 289 S.E.2d 773 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 262.

C.J.S. — 60 C.J.S., Motor Vehicles, § 349.

ALR. — Civil or criminal liability of one in charge of an automobile who permits an unlicensed person to operate it, 137 ALR 475.

Construction, application, and effect of legislation making it an offense to permit, or imputing negligence to one who permits, an unauthorized or unlicensed per-

son to operate motor vehicle, 69 ALR2d 978.

Liability for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 ALR3d 271.

Rental agency's liability for negligent entrustment of vehicle, 78 ALR3d 1170.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 ALR3d 475.

State regulation of motor vehicle rental ("you-drive") business, 60 ALR4th 784.

40-5-123. Permitting unauthorized minor to drive.

No person shall cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any highway when such minor is not authorized under this chapter or in violation of any of the provisions of this chapter. This Code section shall not apply to any vehicle not required to be registered by the laws of this state. (Code 1933, § 68B-403, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1990, p. 2048, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 262.

C.J.S. — 60 C.J.S., Motor Vehicles, § 349.

ALR. — Liability of owner for negligence of one permitted by the former's servant, or member of his family, to drive automobile, 44 ALR 1382; 54 ALR 851; 98 ALR 1043; 134 ALR 974.

Construction, application, and effect of legislation making it an offense to permit,

or imputing negligence to one who permits, an unauthorized or unlicensed person to operate motor vehicle, 69 ALR2d 978.

Liability for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 ALR3d 271.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 ALR3d 475.

40-5-124. Jurisdiction of offenses.

(a) Any person charged with an offense under this chapter may be tried in any municipal court of any municipality if the offense occurred within the corporate limits of such municipality. Such courts are granted the jurisdiction to try and dispose of such cases. The jurisdiction of such courts shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases. Any fines and forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality. Any person charged with an offense under this chapter shall be entitled to request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(b) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Code 1933, § 68B-405, enacted by Ga. L. 1977, p. 1038, § 1; Ga. L. 1987, p. 3, § 40; Ga. L. 1990, p. 2048, § 4.)

Cross references. — Prosecution of traffic offenses generally, T. 40, C. 13.

40-5-125. Fraudulent driver's license or identification card; false statements in applications.

(a) It is a misdemeanor for any person to:

(1) Lend his or her driver's license or identification card to any other person or permit knowingly the use thereof by another person; or

(2) Display or represent as his or her own any driver's license or identification card not issued to him or her.

(b) Any person who knowingly makes any false statement in an application for a driver's license provided for by this chapter shall be guilty of a violation of Code Section 16-10-20. (Code 1981, § 40-5-125, enacted by Ga. L. 1989, p. 519, § 16; Ga. L. 1990, p. 2048, § 4; Ga. L. 1996, p. 1250, § 8; Ga. L. 2000, p. 951, § 5-50; Ga. L. 2002, p. 551, § 6.)

Cross references. — Identity fraud, amendment of this Code section, see 19 § 16-9-120 et seq. Ga. St. U.L. Rev. 81 (2002).

Law reviews. — For note on the 2002

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offenses arising under O.C.G.A. § 40-5-125(a) require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

ARTICLE 7

COMMERCIAL DRIVERS' LICENSES

40-5-140. Short title.

This article shall be known and may be cited as the "Uniform Commercial Driver's License Act." (Code 1981, § 40-5-140, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4.)

JUDICIAL DECISIONS

Commercial truck driver was independent contractor. — Considerable skill and licensing requirements for plaintiff's profession as a commercial truck driver (49 U.S.C. § 31302; O.C.G.A. § 40-5-140) indicated that the plaintiff was an independent contractor, not an employee for purposes of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e to 2000e-17. *Taylor v. BP Express, Inc.*, No. CV 407-182, 2008 U.S. Dist. LEXIS 95313 (S.D. Ga. Nov. 24, 2008).

40-5-141. Purpose and applicability of article; liberal construction.

The purpose of this article is to implement the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of Public Law 99-570, and

reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting commercial drivers to hold only one license; disqualifying commercial drivers who have committed certain criminal or other offenses or serious traffic violations; and strengthening commercial driver licensing and testing standards. This article is a remedial law and shall be liberally construed to promote the public health, safety, and welfare. To the extent that this article conflicts with general driver licensing provisions, this article shall prevail. Where this article is silent, the general driver licensing provisions shall apply. (Code 1981, § 40-5-141, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4.)

40-5-142. Definitions.

As used in this article, the term:

(1) "Alcohol" means:

(A) Beer, ale, port, or stout and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(B) Wine of not less than one-half of 1 percent of alcohol by volume;

(C) Distilled spirits which means that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced; or

(D) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(A) The number of grams of alcohol per 100 milliliters of blood;

(B) The number of grams of alcohol per 210 liters of breath; or

(C) The number of grams of alcohol per 67 milliliters of urine.

(3) "Commerce" means:

(A) Trade, traffic, and transportation within the jurisdiction of the United States between locations in a state and between a location in a state and a location outside such state including a location outside the United States; and

(B) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A) of this paragraph.

(4) "Commercial Driver License Information System" (CDLIS) means the information system established pursuant to the Commercial Motor Vehicle Safety Act of 1986, Title XII, Public Law 99-570, to serve as a clearing-house for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued pursuant to subsection (c) of Code Section 40-5-147.

(6) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(7) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(A) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or such lesser rating as determined by federal regulation;

(B) If the vehicle is designed to transport 16 or more passengers, including the driver; or

(C) If the vehicle is transporting hazardous materials as designated under 49 U.S.C. Section 5103 and is required to be placarded in accordance with the Motor Carrier Safety Rules prescribed by the United States Department of Transportation, Title 49 C.F.R. Part 172, subpart F or is transporting any quantity of a material listed as a select agent or toxin in Title 42 C.F.R. Part 73;

provided, however, that for the purposes of this article, no agricultural vehicle, commercial vehicle operated by military personnel for military purposes, recreational vehicle, or fire-fighting or emergency equipment vehicle shall be considered a commercial motor vehicle. As used in this paragraph, the term "fire-fighting or emergency equipment vehicle" means an authorized emergency vehicle as defined in paragraph (5) of Code Section 40-1-1; provided, however, that the vehicle must be equipped with audible and visible signals and shall be subject to traffic regulations in accordance with the requirements of Code Section 40-6-6. As used in this paragraph, the term "agricultural vehicle" means a farm vehicle which is controlled and operated by a farmer, including operation by employees or family members; used to transport agricultural products, farm machinery, or farm supplies to or from a farm; and operated within 150 miles of such person's farm; which vehicle is not used in the operations of a common or contract carrier. Any other waiver by the Federal Motor Carrier Safety Administration pursuant to Federal Law 49 C.F.R. Parts 383 and 384 of the United States Department of Transportation

shall supersede state law in authorizing the Department of Driver Services to exempt said classes.

(8) "Controlled substance" means any substance so defined under Code Section 16-13-21 and includes all substances listed in Schedules I through V of 21 C.F.R. Part 1308, as they may be revised from time to time.

(9) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

(10) "Disqualification" means any of the following:

(A) The suspension, revocation, or cancellation of a commercial driver's license by any state or jurisdiction of issuance;

(B) The withdrawal of a person's privilege to drive a commercial motor vehicle by any state or by any other jurisdiction as the result of a violation of any state or local law relating to motor vehicle traffic control, other than parking, vehicle weight, or vehicle defect violations; or

(C) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle.

(11) "Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of Code Sections 40-5-151 and 40-5-152, "drive" includes operation or actual physical control of a motor vehicle anywhere in this state, in any other state, or in any foreign jurisdiction.

(12) "Driver" means any person who drives, operates, or is in actual physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic or who is required to hold a commercial driver's license.

(13) "Driver's license" means a license issued by a state to any individual which authorizes the individual to drive a motor vehicle.

(13.1) "Driving a vehicle under the influence" means committing any one or more of the following acts while a person is driving or in actual physical control of a moving commercial or noncommercial vehicle:

(A) Driving under the influence, as prescribed by Code Section 40-6-391 or any law or ordinance equivalent thereto in this state, in any other state, or in any foreign jurisdiction; or

(B) Refusal to submit to state administered chemical testing when requested to do so by a law enforcement officer.

(14) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle on its behalf.

(14.1) "Fatality" means the death of a person as a result of a motor vehicle crash.

(15) "Felony" means any offense under state or federal law that is punishable by death, by imprisonment for life, or by imprisonment for more than 12 months.

(16) "Foreign jurisdiction" means any jurisdiction other than a state of the United States.

(17) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle, commonly referred to as the "gross combination weight rating" (GCWR), is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units. In the absence of a value specified for the towed unit or units by the manufacturer or manufacturers, the gross vehicle weight rating of a combination (articulated) vehicle is the gross vehicle weight rating of the power unit plus the total weight of the towed unit or units, including the loads on them.

(18) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Section 5103 and is required to be placarded in accordance with the Motor Carrier Safety Rules prescribed by the United States Department of Transportation, Title 49 C.F.R. Part 172, subpart F or any quantity of a material listed as a select agent or toxin in Title 42 C.F.R. Part 73.

(18.1) "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(18.2) "Major traffic violation" means a conviction of any of the following offenses or a conviction of any law or ordinance equivalent

thereto in this state, in any other state, or in any foreign jurisdiction, when operating either a commercial motor vehicle or, unless otherwise specified, a noncommercial motor vehicle:

(A) Driving a vehicle under the influence in violation of Code Section 40-6-391;

(B) Hit and run or leaving the scene of an accident in violation of Code Section 40-6-270, failure to report striking an unattended vehicle in violation of Code Section 40-6-271, failure to report striking a fixed object in violation of Code Section 40-6-272, or failure to report an accident in violation of Code Section 40-6-273;

(C) Except as provided in subsection (b) of Code Section 40-5-151, any felony in the commission of which a motor vehicle is used;

(D) Driving a commercial motor vehicle while the person's commercial driver's license or commercial driving privilege is revoked, suspended, canceled, or disqualified;

(E) Homicide by vehicle in violation of Code Section 40-6-393;

(F) Racing on highways or streets in violation of Code Section 40-6-186;

(G) Using a motor vehicle in fleeing or attempting to elude an officer in violation of Code Section 40-6-395;

(H) Fraudulent or fictitious use of or application for a license as provided in Code Section 40-5-120 or 40-5-125;

(I) Operating a motor vehicle with a revoked, canceled, or suspended registration in violation of Code Section 40-6-15;

(J) Violating Code Sections 16-8-2 through 16-8-9, if the property that was the subject of the theft was a vehicle engaged in commercial transportation of cargo or any appurtenance thereto or the cargo being transported therein or thereon, as set forth in paragraph (8) of subsection (a) of Code Section 16-8-12; or

(K) Refusing to submit to a state administered chemical test requested by a law enforcement officer pursuant to Code Section 40-5-55.

(19) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include any vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(19.1) "Noncommercial motor vehicle" means a motor vehicle or combination of vehicles not defined by the term "commercial motor

vehicle" in this Code section or in the regulations of the department for the purpose of licensure.

(20) "Nonresident commercial driver's license" means a commercial driver's license issued by a state to any individual who resides in a foreign jurisdiction.

(21) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(21.1) "School bus" means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school sponsored events. The term does not include a bus used as a common carrier.

(22) "Serious traffic violation" means conviction of any of the following offenses or a conviction of any law or ordinance equivalent thereto in this state, in any other state, or in any foreign jurisdiction, when operating either a commercial motor vehicle or, unless otherwise specified, a noncommercial motor vehicle:

(A) Speeding 15 or more miles per hour above the posted speed limit;

(B) Reckless driving;

(C) Following another vehicle too closely;

(D) Improper or erratic lane change, including failure to signal a lane change;

(E) A violation, arising in connection with a fatal crash, of state law or a local ordinance, relating to motor vehicle traffic control, excluding parking, weight, length, height, and vehicle defect violations, and excluding homicide by vehicle as defined in Code Section 40-6-393;

(F) A railroad grade crossing violation in a noncommercial motor vehicle;

(G) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(H) Driving a commercial motor vehicle without a commercial driver's license in the driver's immediate possession, and excluding such violations when the person's commercial driver's license or commercial driving privilege is suspended, revoked, canceled, or disqualified;

(I) Driving a commercial motor vehicle without a commercial driver's license of the proper class and endorsements for the specific vehicle being operated or for the passengers or type of cargo transported; or

(J) Use of a wireless telecommunications device in violation of Code Section 40-6-241.2 while driving a commercial motor vehicle.

(23) "State" means a state of the United States and the District of Columbia.

(24) "Tank vehicle" means any commercial motor vehicle designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks as defined by federal law. However, the term "tank vehicle" shall not include a portable tank having a rated capacity under 1,000 gallons.

(25) "United States" means the 50 states and the District of Columbia. (Code 1981, § 40-5-142, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 618, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1994, p. 1058, § 1; Ga. L. 2000, p. 951, § 5-51; Ga. L. 2002, p. 1378, § 4; Ga. L. 2003, p. 484, § 3; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 334, § 17-22/HB 501; Ga. L. 2006, p. 449, § 13/HB 1253; Ga. L. 2007, p. 117, § 2/HB 419; Ga. L. 2008, p. 324, § 40/SB 455; Ga. L. 2011, p. 355, § 15/HB 269.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a comma was deleted following "Department of Transportation" at the end of the undesignated language of paragraph (7).

Pursuant to Code Section 28-9-5, in

2007, "state administered" was substituted for "state-administered" in subparagraph (13.1)(B).

U.S. Code. — Provisions concerning the Transportation of Hazardous Materials are codified at 49 U.S.C. § 5101.

JUDICIAL DECISIONS

Operating vehicle without commercial driver's license. — Evidence presented during the bench trial was sufficient for the trial court to find the defendant guilty beyond a reasonable doubt of operating a commercial motor vehicle without being issued a commercial driver's license valid for the vehicle in violation of the Uniform Commercial Driver's License Act, O.C.G.A. § 40-5-146(a), because the state produced

evidence that the combination (articulated) vehicle defendant operated had a gross combination weight rating of 26,500 pounds, which included a towed vehicle (trailer) with a gross vehicle weight rating in excess of 10,000 pounds; therefore, a "Class A" commercial driver's license was required to operate the vehicle under the Act, O.C.G.A. § 40-5-150(b)(1). *Williams v. State*, 303 Ga. App. 407, 693 S.E.2d 613 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Application to State Forestry Commission vehicles. — There is no exemption from O.C.G.A. § 40-5-142 for vehicles assigned to the State Forestry Commission simply on the basis of that assignment, and any State Forestry Commission

vehicle which would otherwise meet the definition of a commercial motor vehicle which is a fire-fighting vehicle or an emergency equipment vehicle is not to be treated as a commercial vehicle. This exemption does not appear to be dependent

on exclusive use of this equipment in responding to emergencies so long as the vehicles are fire-fighting or emergency equipment vehicles. All persons who drive any other nonexempt motor vehicle assigned to the State Forestry Commission which meets the definition of a commercial motor vehicle must obtain and possess a commercial driver's license. 1989 Op. Att'y Gen. 89-27.

Weight rating of vehicle requiring commercial driver's license for operation. — Commercial driver's license is required for a driver to operate a motor vehicle when the gross vehicle weight rating as registered with the county tag agent exceeds the amount specified in O.C.G.A. § 40-5-142(7)(A). 1994 Op. Att'y Gen. No. U94-11.

40-5-143. Driving commercial motor vehicle with more than one license prohibited.

No person who drives a commercial motor vehicle shall have more than one driver's license. (Code 1981, § 40-5-143, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4.)

40-5-144. Notice required of driver when convicted of violating certain laws or when license is suspended, revoked, or canceled; information required of applicant for license.

(a) Any driver of a commercial motor vehicle holding a license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in any other state or any federal, provincial, territorial, or municipal laws of Canada relating to motor vehicle traffic control, other than parking violations, shall notify the department in the manner specified by the department within 30 days of the date of conviction. If the court notifies the department of such conviction, the responsibility of the driver to notify the department shall be waived.

(b) Any driver of a commercial motor vehicle holding a license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state or any federal, provincial, territorial, or municipal laws of Canada relating to motor vehicle traffic control, other than parking violations, shall notify his or her employer in writing of the conviction within 30 days of the date of conviction.

(c) Each driver whose driver's license is suspended, revoked, or canceled by any state; who loses the privilege to drive a commercial motor vehicle in any state for any period; or who is disqualified from driving a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(d) Each person who applies to be a commercial motor vehicle driver shall, at the time of the application, provide the employer with the

following information for the ten years preceding the date of application:

- (1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;
- (2) The dates between which the applicant drove for each employer; and
- (3) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information. (Code 1981, § 40-5-144, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-52.)

40-5-145. Duties of employer.

(a) Each employer shall require every commercial motor vehicle driver applicant to provide the information specified in subsection (d) of Code Section 40-5-144.

(b) No employer may knowingly allow, require, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has a driver's license suspended, revoked, or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state; or has been disqualified from driving a commercial motor vehicle;

(2) In which the driver has more than one driver's license;

(3) In which the driver, or the commercial motor vehicle that he or she is driving, or the motor carrier operation, is subject to an out of service order; or

(4) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings. (Code 1981, § 40-5-145, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2003, p. 484, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, a misspelling of "subject" was corrected in paragraph (b)(3).

40-5-146. Operation of commercial motor vehicle without valid license or driving privilege.

(a) Except when driving under a commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may operate a commercial

motor vehicle unless the person has been issued and is in immediate possession of a commercial driver's license valid for the vehicle he or she is driving.

(b)(1) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, or while subject to a disqualification.

(2) No person may drive a commercial motor vehicle in violation of an out of service order. (Code 1981, § 40-5-146, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2006, p. 449, § 14/HB 1253.)

JUDICIAL DECISIONS

Evidence sufficient to find defendant guilty of violating O.C.G.A. § 40-5-146(a). — Evidence presented during the bench trial was sufficient for the trial court to find the defendant guilty beyond a reasonable doubt of operating a commercial motor vehicle without being issued a commercial driver's license valid for the vehicle in violation of the Uniform Commercial Driver's License Act, O.C.G.A. § 40-5-146(a), because the state

produced evidence that the combination (articulated) vehicle defendant operated had a gross combination weight rating of 26,500 pounds, which included a towed vehicle (trailer) with a gross vehicle weight rating in excess of 10,000 pounds; therefore, a "Class A" commercial driver's license was required to operate the vehicle under the Act, O.C.G.A. § 40-5-150(b)(1). *Williams v. State*, 303 Ga. App. 407, 693 S.E.2d 613 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Weight rating of vehicle requiring commercial driver's license for operation. — Commercial driver's license is required for a driver to operate a motor

vehicle when the gross vehicle weight rating as registered with the county tag agent exceeds the amount specified. 1994 Op. Att'y Gen. No. U94-11.

40-5-147. Requirements for issuance of license or instruction permit; regulations granting waiver or exemption from physical requirements.

(a)(1) Except as provided in Code Section 40-5-148, no person may be issued a commercial driver's license unless that person is a resident of this state, is at least 18 years of age, has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. Part 383, subparts G and H, and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act of 1986, Title XII of Public Law 99-570, in addition to any other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the department in English only.

(2) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility,

or other private institution or a department, agency, or instrumentality of a local government, to administer the skills test specified by this Code section, provided that:

(A) The test is the same which would otherwise be administered by the state;

(B) The third party has entered into an agreement with the state which complies with the requirements set forth in 49 C.F.R. Part 383.75; and

(C) The third party complies with all other requirements set by the department by regulations.

(b) The department may waive the skills test specified in this Code section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. Part 383.77.

(c)(1) A commercial driver's instruction permit may be issued to any individual who holds a valid noncommercial Class C license or has passed all required tests for the operation of a noncommercial Class C vehicle and is 18 years of age.

(2) An applicant for the commercial driver's instruction permit must pass the vision test and all knowledge tests for the type of vehicle he intends to operate along with any knowledge test required for any desired endorsements.

(3) The commercial driver's instruction permit may not be issued for a period to exceed one year. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

(d)(1) A commercial driver's license or commercial driver's instruction permit shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle or while the person's driver's license or driving privilege is suspended, revoked, or canceled in this or any other licensing jurisdiction; nor may a driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all driver's licenses issued by any other state, which license or licenses shall be returned to the issuing state or states for cancellation.

(2) The department shall obtain the driving record of any person who applies for a commercial driver's license from any other states in which he or she has been licensed or convicted. Upon receipt of conviction information for such a person, said convictions shall

become part of the person's driving record in the State of Georgia as provided in Code Section 40-5-2. The department shall review each such person's prior driving record and impose any commercial driving disqualification to which such person is subject that was not imposed by another jurisdiction as required under federal law.

(e) The department is authorized to promulgate rules necessary to grant a waiver or exemption of the physical requirements for a commercial driver's license or a commercial driver's instruction permit in 49 C.F.R. Part 391, Subpart E; provided, however, that the person who is applying for a commercial driver's license or a commercial driver's instruction permit or who has previously been issued a commercial driver's license and who is granted the waiver or exemption shall only be authorized to drive a commercial motor vehicle in this state. Notwithstanding this subsection, the department shall not grant any type of waiver or exemption of said physical requirements unless such type of waiver or exemption has previously been granted by the Federal Motor Carrier Safety Administration. (Code 1981, § 40-5-147, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 618, § 2; Ga. L. 2000, p. 951, § 5-53; Ga. L. 2006, p. 449, § 15/HB 1253; Ga. L. 2007, p. 117, § 3/HB 419; Ga. L. 2008, p. 171, § 9/HB 1111.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, the word "Part" was capitalized in references to the Code of Federal Regulations throughout the Code section.

Pursuant to Code Section 28-9-5, in 2007, the second comma after "subparts G and H," in paragraph (a)(1) was deleted.

40-5-148. Nonresident license.

The department may issue a nonresident commercial driver's license to a resident of a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards of the foreign jurisdiction do not meet the testing standards established in 49 C.F.R. Part 383. The word "nonresident" must appear on the face of the nonresident commercial driver's license. An applicant must surrender any nonresident commercial driver's license issued by another state. Prior to issuing a nonresident commercial driver's license, the department must establish the practical capability of revoking, suspending, and canceling the nonresident commercial driver's license and disqualifying that person from driving a commercial motor vehicle under the same conditions applicable to the commercial driver's license issued to a resident of this state. (Code 1981, § 40-5-148, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-54.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, “Part” was substituted for “part” near the end of the first sentence.

40-5-148.1. Restricted commercial licenses for persons in agricultural industry.

(a) Pursuant to a waiver of the United States Secretary of Transportation, issued April 17, 1992, the department is authorized to issue Class B or Class C restricted commercial drivers' licenses to certain persons employed in the agricultural industry. Such restricted licenses shall be issued annually but shall not be valid for more than a total of 180 days in a 12 month period.

(b) A person shall not be required to pass a knowledge or skills test for issuance of a restricted commercial driver's license, except that such person shall possess a valid noncommercial driver's license, have at least one year's driving experience, submit an application for and submit proof of all information required for a commercial driver's license except for the testing requirements, and not be subject to any other disqualification from driving a commercial motor vehicle or be under any suspension or revocation of such person's regular driver's license.

(c) The holder of a restricted commercial driver's license issued pursuant to this Code section may operate a commercial motor vehicle only within 150 miles of the place of business at which such person is employed and only during such seasonal periods as indicated on such person's restricted driver's license. The holder of a restricted commercial driver's license shall be authorized to transport only the following hazardous materials requiring placarding: diesel fuel in quantities of 1,000 gallons or less; liquid fertilizers in vehicles with total capacities of 3,000 gallons or less, including anhydrous ammonia and other types of liquid fertilizers in vehicles or implements of husbandry with total capacities of 3,000 gallons or less; and solid fertilizers not mixed with any organic substance.

(d) All holders of restricted commercial drivers' licenses shall be subject to disqualifications and penalties under Code Sections 40-5-151 through 40-5-153 and shall be subject to all notices, verifications, and license checks otherwise required under this article.

(e) The department shall promulgate rules and regulations as necessary to implement this Code section by September 1, 1993. (Code 1981, § 40-5-148.1, enacted by Ga. L. 1993, p. 797, § 1; Ga. L. 2000, p. 951, § 5-55.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “to issue” was substituted for “to issued” in subsection (a) and, in subsection (c), “restricted driver's license” was substituted for “restricted, driver's license” in the first sen-

tence and “diesel fuel” was substituted for “Diesel fuel” in the second sentence.

Administrative rules and regulations. — Restricted Commercial Driver’s

License, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Chapter 375-3-11.

40-5-148.2. Issuance of nonresident commercial drivers’ licenses.

If an individual is a resident of another state while that other state is prohibited from issuing commercial drivers’ licenses pursuant to 49 C.F.R. Section 384.405, that individual is eligible to obtain a nonresident commercial driver’s license. The individual shall provide the information specified in Code Section 40-5-149. The department shall promulgate rules and regulations as necessary to implement this Code section within 90 days of being notified that a state will be prohibited from issuing commercial drivers’ licenses. (Code 1981, § 40-5-148.2, enacted by Ga. L. 2006, p. 449, § 16/HB 1253.)

40-5-148.3. Submission of medical examiner’s certificate; penalty for false submissions.

(a) Any person applying for issuance or renewal of a commercial driver’s license shall submit a certification of his or her type of driving and a current medical examiner’s certificate to the department as required by 49 C.F.R. Parts 383 and 391. Receipt of such current medical examiner’s certificate shall be reflected upon such person’s driving record and posted to his or her CDLIS driver record as his or her medical certification status.

(b) Upon the expiration of the medical examiner’s certificate submitted to the department pursuant to this Code section, the department shall update the medical certification status of such person on his or her driving record and his or her CDLIS driving record. The department shall notify such person of the change of his or her medical certification status and advise such person that he or she will be disqualified from operating a commercial motor vehicle indefinitely if such person does not submit a current medical examiner’s certificate to the department within 60 days. Such notice shall be sent via certified mail or such other delivery service obtained by the department that results in delivery confirmation to the address reflected on its records as the driver’s mailing address.

(c) A commercial driving disqualification imposed as the result of the expiration of a medical examiner’s certificate shall be reinstated, and changes to a person’s medical certification status shall be updated upon receipt of a current medical examiner’s certificate.

(d) The department shall suspend the commercial driving privilege or commercial driver’s license of any person who submits a medical

examiner's certificate containing false information. The period of such suspension shall be 60 days. (Code 1981, § 40-5-148.3, enacted by Ga. L. 2011, p. 355, § 16/HB 269.)

Effective date. — This Code section became effective January 1, 2012.

40-5-149. Contents of application; application required when name, mailing address, or residence changed.

(a) The application for a commercial driver's license or commercial driver's instruction permit shall include the following:

- (1) The full legal name and current mailing and residential address of the person;
- (2) A physical description of the person including sex, height, weight, and eye color;
- (3) Full date of birth;
- (4) Reserved;
- (5) The person's signature;
- (6) The person's current photograph;
- (7) Certifications, including those required by 49 C.F.R. Part 383.71(a);
- (8) Any other information required by the department; and
- (9) Consent to release driving record information to the Commercial Driver License Information System clearing-house and whatever agent or agency the Commercial Driver License Information System deems necessary by federal requirements.

Each application shall be accompanied by an application fee of \$35.00, except for those who operate or are applying to operate a public school bus and inmates of state or county correctional institutions who operate or are applying to operate commercial motor vehicles under the supervision of such institutions during the period of such inmates' confinement, in which cases there shall be no application fee.

(b) When a licensee changes his or her name, mailing address, or residence, an application for a new license shall be made within 30 days of such change. The fee for such new license shall be as provided in Code Section 40-5-25.

(c) No person who has been a resident of this state for 30 days or longer may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. It shall be

the responsibility of the employer to notify the employee of the license issuance law of this state.

(d) Except as provided in Code Section 40-5-36, relating to veterans' licenses and except as provided in this Code section for public school bus drivers, there shall be no exceptions to the application and license fees required for issuance of a commercial driver's license or a commercial driver's instruction permit. (Code 1981, § 40-5-149, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 1284, § 2; Ga. L. 1997, p. 1443, § 3; Ga. L. 2000, p. 951, § 5-56; Ga. L. 2008, p. 171, § 10/HB 1111.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, "Part" was substituted for "part" in paragraph (a)(7).

JUDICIAL DECISIONS

Review of individuals who suffer alterations of consciousness. — Regulation providing for review of individuals who suffer alterations of consciousness was constitutional. *Bowman v. Knight*, 263 Ga. 222, 430 S.E.2d 582 (1993).

40-5-150. (For effective date, see note.) Contents of license; classifications; endorsements and restrictions; information to be obtained before issuance; notice of issuance; expiration of license; renewal.

(a) The commercial driver's license shall be marked "Commercial Driver's License" or "CDL" and shall be, to the maximum extent practicable, tamperproof, and shall include, but not be limited to, the following information:

- (1) The full legal name and residential address of the person;
- (2) The person's color photograph;
- (3) A physical description of the person, including sex, height, weight, and eye color;
- (4) Full date of birth;
- (5) The license number or identifier assigned by the department;
- (6) The person's signature;
- (7) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive, together with any endorsements or restrictions;
- (8) (For effective date, see note.) The name of this state; and
- (9) (For effective date, see note.) The dates between which the license is valid.

(b) Commercial driver's licenses may be issued with the following classifications:

(1) Class A — Any combination of vehicles with a gross vehicle weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of 10,000 pounds;

(2) Class B — Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds gross vehicle weight rating;

(3) Class C — Any single vehicle with a gross vehicle weight rating of less than 26,001 pounds, any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of 10,000 pounds, or any such vehicle towing a vehicle with a gross vehicle weight rating in excess of 10,000 pounds, provided that the combination of vehicles has a gross combined vehicle weight rating less than 26,001 pounds. This classification shall apply to vehicles designed to transport 16 or more passengers, including the driver, and vehicles used in the transportation of hazardous materials which require the vehicles to be placarded under 49 C.F.R. Part 172, subpart F;

(4) Class M — A motorcycle as defined in Code Section 40-1-1; and

(5) Class P — A commercial driver's instruction permit used in conjunction with the commercial driver's instruction permit vehicle classification.

(c) Commercial driver's licenses may be issued with the following endorsements and restrictions:

(1) "H" — Authorizes the driver to drive a vehicle transporting hazardous materials;

(2) "L" — Restricts the driver to vehicles not equipped with air brakes;

(3) "T" — Authorizes driving double and triple trailers;

(4) "P" — Authorizes driving vehicles carrying 16 or more passengers, including the driver, but does not authorize the driver to drive a school bus;

(5) "N" — Authorizes driving tank vehicles;

(5.1) "S" — Authorizes the driver to drive a school bus; and

(6) "X" — Represents a combination of hazardous materials and tank vehicle endorsements.

The fee for Classes A, B, C, M, and P licenses and for the endorsements and restrictions shall be as provided in Code Section 40-5-25.

(d) The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles. No person shall drive a vehicle which requires an endorsement unless the proper endorsement appears on the driver's license.

(e) Before issuing a commercial driver's license, the department shall obtain driving record information through the Commercial Driver License Information System, through the National Driver Register (NDR), and from each state in which the applicant has been licensed.

(f) Within ten days after issuing a commercial driver's license, the department shall notify the Commercial Driver License Information System of that fact and provide all information required to ensure identification of the licensee.

(g) Except as provided for in Code Section 40-5-21.1, the commercial driver's license shall expire on the licensee's birthdate in the fifth year following the issuance of such license.

(h) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by subsection (a) of Code Section 40-5-149, providing updated information and required medical certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed.

(i)(1) Before issuing, renewing, upgrading, or transferring a commercial driver's license with a hazardous materials endorsement, the department shall obtain a Transportation Security Administration determination that the individual does not pose a security risk warranting denial of the endorsement. The department shall promulgate rules and regulations as necessary to implement this subsection.

(2) If, after issuing a commercial driver's license bearing a hazardous materials endorsement, the department receives notification that the Transportation Security Administration has determined that the holder thereof poses a security risk, it shall cancel the commercial driver's license. The department may issue a new commercial driver's license without a hazardous materials endorsement to said licensee upon surrender of the license bearing the cancelled endorsement.

(3) If a person to whom the department previously issued a commercial driver's license with a hazardous materials endorsement has provided all of the required information to the Transportation Security Administration for the completion of a security threat assessment, but the Transportation Security Administration has not provided a Determination of No Security Threat or a Final Determination of Threat Assessment before the expiration date of said

commercial driver's license, the department may renew the commercial driver's license for a period of 90 days if the licensee wishes to retain the hazardous materials endorsement. Notwithstanding the foregoing, the person's commercial driver's license may be renewed for the full renewal period if the licensee wishes to drop the hazardous materials endorsement.

(4) If a person to whom another state previously issued a commercial driver's license with a hazardous materials endorsement applies prior to the expiration thereof to transfer said license, the department may issue a temporary commercial driver's license with a hazardous materials endorsement valid for a period of 90 days upon the person's successful completion of all other statutory requirements. It shall be a prerequisite to the issuance of such a temporary license that the person has provided all of the required information to the Transportation Security Administration for the completion of a security threat assessment, but the Transportation Security Administration has not provided a Determination of No Security Threat or a Final Determination of Threat Assessment prior to the expiration date of the person's commercial driver's license issued by the previous state. (Code 1981, § 40-5-150, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1994, p. 97, § 40; Ga. L. 1996, p. 1250, § 9; Ga. L. 1997, p. 1443, § 4; Ga. L. 2000, p. 951, §§ 5-57, 5-58; Ga. L. 2003, p. 484, § 5; Ga. L. 2005, p. 854, § 2/SB 273; Ga. L. 2006, p. 449, §§ 17, 18/HB 1253; Ga. L. 2007, p. 117, § 4/HB 419; Ga. L. 2008, p. 171, § 11/HB 1111; Ga. L. 2014, p. 710, § 7-2/SB 298.)

Delayed effective date. — Paragraphs (a)(8) and (a)(9), as set out above, become effective January 1, 2015. For version of paragraphs (a)(8), (a)(9), and (a)(10) in effect until January 1, 2015, see the 2014 amendment note.

The 2014 amendment, effective January 1, 2015, in subsection (a), added "and" at the end of paragraph (a)(8); substituted a period for "; and" at the end of paragraph (a)(9); and deleted former paragraph (a)(10), which read: "The license fee and fees for any endorsements."

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, "Part" was substituted for "part" in paragraph (b)(3).

Pursuant to Code Section 28-9-5, in 1990, a comma was deleted following "C.F.R." in paragraph (b)(3).

Editor's notes. — Ga. L. 1997, p. 1443, § 6, not codified by the General Assembly, provides that the 1997 amendment to this Code section shall be applicable to licenses, permits, and identification cards issued on or after July 1, 1997.

Ga. L. 2005, p. 854, § 3/SB 273, not codified by the General Assembly, provides that the 2005 amendment applies to offenses occurring on or after July 1, 2005.

JUDICIAL DECISIONS

Operating vehicle without commercial driver's license. — Evidence presented during the bench trial was sufficient for the trial court to find the

defendant guilty beyond a reasonable doubt of operating a commercial motor vehicle without being issued a commercial driver's license valid for the vehicle in

violation of the Uniform Commercial Driver's License Act, O.C.G.A. § 40-5-146(a), because the state produced evidence that the combination (articulated) vehicle defendant operated had a gross combination weight rating of 26,500 pounds, which included a towed vehicle

(trailer) with a gross vehicle weight rating in excess of 10,000 pounds; therefore, a "class A" commercial driver's license was required to operate the vehicle under the Act, O.C.G.A. § 40-5-150(b)(1). *Williams v. State*, 303 Ga. App. 407, 693 S.E.2d 613 (2010).

40-5-151. Disqualification from driving; action required after suspending, revoking, or canceling license or nonresident privileges.

(a) Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of a major traffic violation as defined in paragraph (18.2) of Code Section 40-5-142.

(b) Any person is disqualified from driving a commercial motor vehicle for a period of three years if convicted of a first violation of using a commercial motor vehicle in the commission of a felony or a major traffic violation as defined in paragraph (18.2) of Code Section 40-5-142, provided that the vehicle being operated or used in connection with such violation or commission of such felony is transporting a hazardous material required to be placarded under Section 105 of the Hazardous Materials Transportation Act, 49 U.S.C. app. 1804.

(c) Any person is disqualified from driving a commercial motor vehicle for life if convicted of a second or subsequent major traffic violation as defined in paragraph (18.2) of Code Section 40-5-142 or any combination of such violations arising from two or more separate incidents.

(d) The department may issue regulations establishing guidelines, including conditions, under which a disqualification for life under subsection (c) of this Code section may be reduced to a period of not less than ten years. The department is not authorized to make any other reduction in a term of disqualification or to issue a limited or other permit or license that would allow the operation of a commercial motor vehicle during the term of disqualification mandated by this Code section.

(e) Notwithstanding the provisions of subsection (d) of this Code section, any person is disqualified from driving a commercial motor vehicle for life who knowingly uses a motor vehicle in the commission of any felony involving the manufacture, distribution, cultivation, sale, transfer of, trafficking in, or dispensing of a controlled substance or marijuana, or possession with intent to manufacture, distribute, cultivate, sell, transfer, traffic in, or dispense a controlled substance or marijuana.

(f) Any person is disqualified from driving a commercial motor vehicle for a period of:

(1) Not less than 60 days if convicted of two serious traffic violations as defined in paragraph (22) of Code Section 40-5-142 arising from separate incidents occurring within a three-year period as measured from the dates of arrests for which convictions were obtained; or

(2) Not less than 120 days if convicted of a third or subsequent serious traffic violation as defined in paragraph (22) of Code Section 40-5-142 arising from separate incidents occurring within a three-year period as measured from the dates of arrests for which convictions were obtained.

(g)(1) Any person is disqualified from driving a commercial motor vehicle based on the following violations of out-of-service orders:

(A) First violation — a driver who is convicted of a first violation of an out-of-service order is disqualified for a period of not less than 180 days and not more than one year;

(B) Second violation — a driver who is convicted of two violations of out-of-service orders in separate incidents is disqualified for a period of not less than two years and not more than five years; and

(C) Third or subsequent violation — a driver who is convicted of three or more violations of out-of-service orders in separate incidents is disqualified for a period of not less than three years and not more than five years.

(2) Whenever the operator of a commercial motor vehicle is issued an out-of-service order, a copy of such order shall be issued to the operator of the commercial motor vehicle, the operator of the commercial motor vehicle's employer, and a copy or notice of such out-of-service order shall be provided to the department. The form of such out-of-service order, the procedures for notifying the department upon the issuance of such an order, and other matters relative to the issuance of out-of-service orders and violations thereof shall be provided in rules and regulations promulgated by the commissioner.

(3) Any person is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under Section 105 of the Hazardous Materials Transportation Act, 49 U.S.C. app. 1804, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any

ten-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under Section 105 of the Hazardous Materials Transportation Act, 49 U.S.C. app. 1804, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver.

(4) In addition to any other penalty imposed pursuant to this article, any driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$2,500.00 for a first offense and not less than \$5,000.00 for a second or subsequent offense.

(h) After suspending, revoking, or canceling a commercial driver's license, the department shall update its records to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the department shall notify the licensing authority of the state which issued the commercial driver's license within ten days.

(i) Any person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if it is determined, in a check of an applicant's license status and record prior to issuing a commercial driver's license or at any time after the commercial driver's license is issued, that the applicant has falsified information on his or her application or any related filing.

(j)(1) Any person is disqualified from driving a commercial vehicle for a period of not less than 30 days if the department receives notification from the Federal Motor Carrier Safety Administration that the person poses an imminent hazard.

(2) If the Federal Motor Carrier Safety Administration notifies the department that a person's driving constitutes an imminent hazard and imposes a disqualification greater than 30 days, the person shall be disqualified from driving a commercial vehicle for the period designated by the Federal Motor Carrier Safety Administration, not to exceed one year.

(k)(1) Any person is disqualified from operating a commercial motor vehicle if convicted of any of the following railroad grade crossing offenses while operating a commercial motor vehicle:

(A) Failing to slow down and check the tracks are clear of an approaching train before proceeding;

(B) Failing to stop before reaching the crossing if the tracks are not clear;

(C) Failing to stop before driving onto the crossing;

(D) Failing to leave sufficient space to drive completely through a railroad crossing without stopping;

(E) Failing to obey a traffic-control device or the directions of an enforcement official at a railroad crossing; or

(F) Failing to negotiate a crossing because of insufficient under-carriage clearance.

(2)(A) Upon a first conviction for an offense listed in paragraph (1) of this subsection, the period of disqualification shall be 60 days.

(B) Upon a second conviction within a three-year period for an offense listed in paragraph (1) of this subsection arising from a separate incident within a three-year period, the period of disqualification shall be 120 days.

(C) Upon a third or subsequent conviction within a three-year period for an offense listed in paragraph (1) of this subsection arising from a separate incident, the period of disqualification shall be one year.

(1)(1) All disqualifications as provided for in subsection (f) of this Code section shall become effective upon the date that the department processes the citation or conviction, provided that no such disqualification is in effect; if such disqualification is in effect the subsequent disqualification shall not take effect until the current disqualification expires.

(2) Notwithstanding paragraph (1) of this subsection, any other disqualification as provided for in this Code section shall become effective upon the date that the department processes the citation or conviction and may run concurrently to any other disqualifications in effect.

(m) All disqualifications provided for in this Code section shall be imposed based on offenses in state law or on offenses of any laws or ordinances equivalent thereto in this state, in any other state, or in any foreign jurisdiction. (Code 1981, § 40-5-151, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 618, § 3; Ga. L. 1992, p. 2785, § 21; Ga. L. 1995, p. 229, § .5; Ga. L. 2000, p. 951, § 5-59; Ga. L. 2002, p. 1378, § 5; Ga. L. 2003, p. 484, § 6; Ga. L. 2004, p. 631, § 40; Ga. L. 2006, p. 329, § 3/HB 1275; Ga. L. 2006, p. 449, § 19/HB 1253; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2007, p. 117, § 5/HB 419; Ga. L. 2008, p. 171, § 12/HB 1111; Ga. L. 2008, p. 324, § 40/SB 455.)

Cross references. — Disqualifying offense of cargo theft, § 16-8-22.

JUDICIAL DECISIONS

Order upheld when driver afforded sufficient due process. — Administrative decision disqualifying a driver from driving a commercial motor vehicle for life based on the refusal to submit to state-administered chemical testing and a prior conviction for driving under the influence was upheld as the arresting officer informed the driver that the driver could lose that driver's license to drive upon refusing to submit to chemical testing, and the requirements of due process did not require the arresting officer to inform the driver of all the consequences of refusing to submit to chemical testing. Moreover, the driver requested and received a hearing under O.C.G.A. § 40-5-67.1(g)(1). *Chancellor v. Dozier*, 283 Ga. 259, 658 S.E.2d 592 (2008).

Implied consent requirements. — Implied consent notice given to a defendant under O.C.G.A. § 40-5-67.1(b)(2) did not violate due process; the ability to refuse to submit to chemical testing was not a constitutional right and as a trooper advised the defendant that a refusal to submit to testing could result in the suspension of the defendant's personal driver's license, the trooper was not required to also advise the defendant that under O.C.G.A. § 40-5-151(c), the defendant could also lose the defendant's commercial driver's license for life. *Chancellor v. State*, 284 Ga. 66, 663 S.E.2d 203 (2008).

Cited in *Meyer v. State*, 224 Ga. App. 183, 480 S.E.2d 234 (1997).

40-5-152. Operating vehicle while having measurable alcohol in system; refusal to take chemical test.

(a) Notwithstanding any other provision of this article, a person may not drive, operate, or be in physical control of a commercial motor vehicle while having any measurable alcohol in his or her system.

(b) A person who drives, operates, or is in physical control of a commercial motor vehicle while having any measurable alcohol in his or her system or who refuses to take a test prescribed by Code Section 40-5-55 to determine his or her alcohol content must be placed out of service for 24 hours. (Code 1981, § 40-5-152, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2003, p. 484, § 7.)

JUDICIAL DECISIONS

Cited in *Meyer v. State*, 224 Ga. App. 183, 480 S.E.2d 234 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 124 et seq.

40-5-153. Implied consent to chemical test; administration of test; procedure.

(a) Any person who drives a commercial motor vehicle anywhere in the state shall be deemed to have given consent, subject to the

provisions of Code Sections 40-5-55 and 40-6-392, to a test or tests of that person's blood, breath, or urine for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law enforcement officer who, after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having any measurable alcohol in his or her system.

(c) A person requested to submit to a test as provided in subsection (a) of this Code section must be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in that person's being disqualified from operating a commercial motor vehicle for one year under Code Section 40-5-151 and from operating a private motor vehicle as provided in Code Section 40-5-67.1.

(d) If the person refuses testing, the law enforcement officer must submit an affidavit to the department within ten days of such refusal certifying that the test was requested pursuant to subsection (a) of this Code section and that the person refused to submit to testing.

(e) Upon receipt of the affidavit submitted by a law enforcement officer under subsection (d) of this Code section, the department must disqualify the driver from driving a commercial motor vehicle for a period of one year as provided under Code Section 40-5-151 and, if the driver refused testing, from operating a private motor vehicle as provided under Code Section 40-5-67.1. If the driver is in possession of a driver's license, the officer shall take possession of the license and attach it to the affidavit. (Code 1981, § 40-5-153, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1992, p. 2564, § 11; Ga. L. 2000, p. 951, § 5-60.)

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992).

JUDICIAL DECISIONS

Consent obtained by misleading information. — Police officer's warning to a nonresident defendant that: "Under OCGA § 40-5-55 and this section, you will lose your privilege to operate a motor vehicle from six to twelve months should you refuse to submit to the designated State administered chemical test" omitted the crucial fact that refusal to take the test would affect the defendant's ability to drive "on the highways of this state."

Thus, the defendant was deprived of making an informed choice, and the test results were inadmissible; overruling, *Anthony v. State*, 211 Ga. App. 622, 441 S.E.2d 70 (1993) and *State v. Reich*, 210 Ga. App. 407, 436 S.E.2d 703 (1993). *State v. Coleman*, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Right to an alternative test. — Defendant's failure to complete a breath test without justification negated the defen-

dant's right to an alternative test. *Allen v. State*, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

Adequacy of warning. — Notices advising the defendant that if the defendant refused testing the defendant would be disqualified from operating a commercial motor vehicle for a minimum of one year were adequate, even though the notices did not advise the defendant that refusal to submit to the tests could also disqualify the defendant from operating a private motor vehicle. *State v. Becker*, 240 Ga. App. 267, 523 S.E.2d 98 (1999).

Warning not required for alco-sensor test. — O.C.G.A. § 40-5-153(c), regarding implied consent warnings of commercial drivers, did not apply to an alco-sensor test, which merely detected the presence, not concentration, of alcohol that was given to a driver who drove past an inspection station in a truck with a hazardous materials placard. *Tunali v. State*, 311 Ga. App. 844, 717 S.E.2d 341 (2011).

40-5-154. Notice to licensing state of conviction of nonresident licensee for violation of state law or local ordinance.

Within ten days after receiving a report of the conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the department shall notify the licensing state of such conviction. (Code 1981, § 40-5-154, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-61.)

40-5-155. Information to be available to driver's license administrators of other states, employers, and insurers.

Notwithstanding any other provision of law to the contrary, the department shall furnish full information regarding the driving record of any person to:

- (1) The driver's license administrator of any other state or of any province or territory of Canada requesting that information;
- (2) Any employer or prospective employer upon the request of such employer and the payment of a fee of not more than \$10.00; and
- (3) Insurers upon request and payment of a fee of not more than \$10.00. (Code 1981, § 40-5-155, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-62.)

40-5-156. Rules and regulations.

The commissioner may adopt any rules and regulations necessary to carry out the provisions of this article. (Code 1981, § 40-5-156, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-63.)

40-5-157. Authority for commissioner to enter into agreements, arrangements, or declarations.

The commissioner or his or her designee may enter into or make agreements, arrangements, or declarations to carry out the provisions of this article. (Code 1981, § 40-5-157, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-64.)

40-5-158. Driving with license issued by state or province or territory of Canada in accordance with minimum federal standards.

Notwithstanding any other law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license issued by any state or any province or territory of Canada in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses; if the person's license is not suspended, revoked, or canceled; and if the person is not disqualified from driving a commercial motor vehicle or subject to an out of service order. (Code 1981, § 40-5-158, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4.)

40-5-159. Violations.

(a) Any person who drives a commercial motor vehicle while in violation of the provisions of Code Section 40-5-143 or any employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of the provisions of subsection (b) of Code Section 40-5-145 shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) Except as provided for in subsections (d) and (e) of this Code section, by a civil penalty of \$2,500.00 for each offense; and

(2) By a fine of \$5,000.00, imprisonment for not more than 90 days, or both, for each offense.

(b) Any employer who reports fraudulent information to the department regarding an employee's employment or experience as required under 49 C.F.R. Part 383 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500.00.

(c) Any person who drives a commercial motor vehicle while in violation of the provisions mandated under Code Section 40-5-146 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500.00.

(d) Any employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of any

federal, state, or local law or regulation pertaining to an out-of-service order shall be subject to a civil penalty in an amount not less than \$2,750.00 and not to exceed \$25,000.00.

(e) Any employer who knowingly allows, requires, permits, or authorizes a driver to drive a commercial motor vehicle in violation of any federal, state, or local law or regulation pertaining to railroad grade crossings shall be subject to a civil penalty not to exceed \$10,000.00. (Code 1981, § 40-5-159, enacted by Ga. L. 1989, p. 519, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 2000, p. 951, § 5-65; Ga. L. 2003, p. 484, § 8; Ga. L. 2006, p. 449, § 20/HB 1253; Ga. L. 2007, p. 117, § 6/HB 419; Ga. L. 2008, p. 171, § 13/HB 1111.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, “Part” was substituted for “part” in subsection (b).

ARTICLE 8

IDENTIFICATION CARDS FOR PERSONS WITH DISABILITIES

Code Commission notes. — Pursuant to Code Section 28-9-5, Article 7 (Code Sections 40-5-140 through 40-5-149), enacted by Ga. L. 1989, p. 628, was renu-

bered as Article 8 (Code Sections 40-5-170 through 40-5-179), since an Article 7 was also enacted by Ga. L. 1989, p. 519.

40-5-170. Definitions.

As used in this article, the term:

(1) “Disability” means any physical, mental, or neurological impairment which severely restricts a person’s mobility, manual dexterity, or ability to climb stairs; substantial loss of sight or hearing; loss of one or more limbs or use thereof; or significantly diminished reasoning capacity.

(2) “Identification card for persons with disabilities” means an identification card issued as provided in this article.

(3) “Permanent disability” means any disability which is permanent in nature or which is expected to continue for a period of at least five years.

(4) “Person with disabilities” means any person with a permanent or temporary disability.

(5) “Temporary disability” means any disability which is expected to continue for at least six months but less than five years. (Code 1981, § 40-5-170, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7.)

40-5-171. Issuance and contents of identification cards for persons with disabilities.

(a) The department shall issue personal identification cards to persons with disabilities who make application to the department in accordance with rules and regulations prescribed by the commissioner. The identification card for persons with disabilities shall contain a recent color photograph of the applicant and the following information:

- (1) Full legal name;
- (2) Address of residence;
- (3) Birth date;
- (4) Date identification card was issued;
- (5) Date identification card expires;
- (6) Sex;
- (7) Height;
- (8) Weight;
- (9) Eye color;
- (10) Signature of person identified or facsimile thereof; and

(11) Such other information as required by the department; provided, however, that the department shall not require an applicant to submit or otherwise obtain from an applicant any fingerprints or any other biological characteristic or information which uniquely identifies an individual, including without limitation deoxyribonucleic acid (DNA) and retinal scan identification characteristics but not including a photograph, by any means upon application.

(b) The identification card for persons with disabilities shall bear the signatures of the commissioner and the Governor and shall bear an identification card number which shall not be the same as the applicant's social security number.

(c) In addition to the information required in subsection (a) of this Code section, identification cards issued to persons with disabilities shall display the international handicapped symbol on a location designated by the department. The department may display the international handicapped symbol on any driver's license or identification card issued pursuant to the provisions of this chapter upon receipt of the required documentation from the person requesting its inclusion. (Code 1981, § 40-5-171, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 1996, p. 1250, § 10; Ga. L. 1997, p. 1443, § 5; Ga. L. 2000, p. 951, § 5-66; Ga. L. 2005, p.

1122, § 5/HB 577; Ga. L. 2008, p. 171, § 14/HB 1111; Ga. L. 2010, p. 932, § 21/HB 396.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, in paragraph (a)(12) (now paragraph (a)(11)), a comma was deleted following “limitation” and a comma was added following “photo-graph”.

Editor’s notes. — Ga. L. 1997, p. 1443, § 6, not codified by the General Assembly, provides that the 1997 amendment to this Code section shall be applicable to licenses, permits, and identification cards issued on or after July 1, 1997.

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of fingerprint requirement. — Requiring applicants to submit fingerprints does not violate constitutional rights. 1997 Op. Att’y Gen. No. U97-7.

Privacy Act of 1974 (5 U.S.C. § 552a) does not apply to the provisions of O.C.G.A. § 40-5-171 regarding fingerprinting. 1997 Op. Att’y Gen. No. U97-33.

40-5-172. Term of card issued to person with permanent disability; issuance to person with temporary disability; renewal.

(a) The identification card for persons with disabilities shall be issued to a person with a permanent disability for a period of five years and shall be renewable on the applicant’s birthday in the fourth year following such issuance. Such identification cards shall be issued to persons:

(1) With obvious permanent disabilities without further verification of disability; and

(2) With disabilities which are not obvious upon presentation of the current sworn affidavit of at least one medical doctor attesting to such permanent disability. A current affidavit shall be presented at each request for renewal.

(b) The identification card for persons with disabilities shall be issued to a person with a temporary disability upon presentation of a sworn affidavit of at least one medical doctor attesting to such disability and estimating the duration of such disability. Such identification cards shall be issued for periods of six months. A current affidavit of a medical doctor attesting to the continuance of such disability shall be presented at each request for renewal thereafter.

(c) The commissioner may by rule authorize renewal of an identification card issued to a person with a permanent disability by means other than personal appearance. No further documentation of such person’s disability shall be required for such renewal. (Code 1981, § 40-5-172, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2011, p. 355, § 17/HB 269.)

40-5-173. Format of card.

The face of the identification card for persons with disabilities shall prominently bear wording selected by the department that is indicative of the presence of urgent medical information on the reverse of the card. On the reverse side of the identification card shall be a space within which the department shall enter such medical information as the applicant may request. The department may print the urgent medical indicator and wording on the reverse of any driver's license or identification card upon receipt of the required documentation from the person requesting its inclusion. (Code 1981, § 40-5-173, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2010, p. 932, § 22/HB 396.)

40-5-174. Proof of need for special transportation services for persons with disabilities.

The face of the identification card for persons with disabilities shall bear the word "TRANSPORTATION" with a box or blank space adjacent thereto. The department shall place an "X" in such box or blank space if the applicant's disability creates mobility limitations which prevent him or her from climbing stairs or otherwise from entering normally designed buses or other vehicles normally used for public transportation. When so marked, the identification card for persons with disabilities shall serve as sufficient proof of the need for special transportation services for persons with disabilities provided by any entity in this state. The department may print the transportation indicator on any driver's license or identification card upon receipt of the required documentation from the person requesting its inclusion. (Code 1981, § 40-5-174, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2010, p. 932, § 23/HB 396.)

40-5-175. Admission to seating for persons with disabilities at public events.

The identification card for persons with disabilities shall bear the word "SEATING" with a box or blank space adjacent thereto. The department shall place an "X" in such box or blank space if the applicant's disability creates mobility or health limitations which prevent him or her from climbing stairs or steep inclines. When so marked, the identification card for persons with disabilities shall be sufficient to admit the holder to seating for persons with disabilities at public events in this state. The department may print the priority seating indicator on any driver's license or identification card upon receipt of the required documentation from the person requesting its inclusion. (Code 1981, § 40-5-175, enacted by Ga. L. 1989, p. 628, § 1;

Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2010, p. 932, § 24/HB 396.)

40-5-176. Rules and regulations.

The commissioner shall promulgate rules and regulations under which this article shall be implemented. (Code 1981, § 40-5-176, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2000, p. 951, § 5-67.)

40-5-177. Evidence of applicant's birth date required.

The department shall require an applicant for an identification card for persons with disabilities to furnish a birth certificate or other verifiable evidence stating the applicant's birth date. (Code 1981, § 40-5-177, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7.)

40-5-178. Fee for card; waiver for person with veteran's driver's license.

(a) The department shall collect a fee of \$5.00 for an identification card for persons with disabilities, which fee shall be deposited in the state treasury in the same manner as motor vehicle driver's license fees.

(b) The department shall not be authorized to collect a fee for an identification card for persons with disabilities from those persons who meet the qualifications for a veteran's driver's license under the provisions of Code Section 40-5-36. (Code 1981, § 40-5-178, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "the" was deleted preceding "an identification" in subsection (a).

Cross references. — Replacement of licenses, state identification cards, and other documents during periods of natural disaster, § 50-1-9.

40-5-179. Fraudulent identification cards; penalties.

It is a misdemeanor for any person:

(1) To lend his or her identification card for persons with disabilities to any other person or knowingly to permit the use thereof by another; and

(2) To display or represent as his or her own any identification card for persons with disabilities not issued to him or her. (Code 1981,

§ 40-5-179, enacted by Ga. L. 1989, p. 628, § 1; Ga. L. 1990, p. 2048, § 4; Ga. L. 1995, p. 1302, § 7; Ga. L. 2002, p. 551, § 7.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 81 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offenses arising under O.C.G.A. § 40-5-179(1) and (2) require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

CHAPTER 6

UNIFORM RULES OF THE ROAD

Article 1

General Provisions

Sec.	
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40-6-221. Definitions.

40-6-222. Permits [Repealed].

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40-6-224.1. Handicapped parking places for the nonambulatory [Repealed].

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40-6-226. Offenses and penalties.
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Article 11
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40-6-241.2. Writing, sending, or reading text based communication while operating motor vehicle prohibited; exceptions; penalties for violation.
40-6-242. Obstruction of driver's view or interference with control of vehicle.
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40-6-247. Following fire apparatus or emergency vehicle.
40-6-248. Crossing fire hose.
40-6-248.1. Securing loads on vehicles.
40-6-249. Littering highway.
40-6-250. Wearing device which impairs hearing or vision.
40-6-251. Driving in circular or zigzag course; "laying drags."
40-6-252. Parking, standing, or driving vehicle in private parking area after request not to do so.
40-6-253. Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area.
40-6-253.1. Transportation of etiologic agent; exception; penalty for violation.
40-6-254. Operating vehicle without adequately securing load.
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Accidents

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40-6-270. Hit and run; duty of driver to stop at or return to scene of accident.
40-6-271. Duty upon striking unattended vehicle.
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40-6-273. Duty to report accident resulting in injury, death, or property damage.
40-6-273.1. Instruction to drivers to provide certain information to other parties.
40-6-274. Exemption from duty to stop at scene or report accident.
40-6-275. Duty to remove vehicle from public roads; removal of incapacitated vehicle from state highway.
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40-6-278. Uniform reports and reporting procedures.
40-6-279. Redesignated.

Article 13
Special Provisions for Certain Vehicles

PART 1
BICYCLES AND PLAY VEHICLES

- 40-6-290. Application of part.
40-6-291. Traffic laws applicable to bicycles; signaling of right hand turns.
40-6-292. Manner of riding bicycle; carrying more than one person.
40-6-293. Clinging to vehicles.
40-6-294. Riding on roadways and bicycle paths.
40-6-295. Carrying articles.
40-6-296. Lights and other equipment on bicycles.
40-6-297. Violation of part a misdemeanor; duty of parents and guardians.
40-6-298. Rules and regulations.
40-6-299. Redesignated.

PART 2
MOTORCYCLES

Sec.

- 40-6-310. Traffic laws applicable to persons operating motorcycles.
40-6-311. Manner of riding motorcycle generally.
40-6-312. Operating motorcycle on roadway laned for traffic.
40-6-313. Clinging to other vehicles.
40-6-314. Footrests and handlebars.
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PART 2A

PERSONAL ASSISTIVE MOBILITY DEVICES

- 40-6-320. Operation on highways and sidewalks; direction of travel.
40-6-321. Due care to pedestrians.
40-6-322. Speed of travel restricted.
40-6-323. Parking.
40-6-324. Transportation of hazardous materials; medical oxygen excluded.
40-6-325. Required equipment; minimum age for operation; exception to age requirement.
40-6-326. Operation while intoxicated.
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PART 3

PERSONAL TRANSPORTATION VEHICLES

- 40-6-330. Standards for operating personal transportation vehicles.
40-6-330.1. Required equipment for personal transportation vehicles; grandfather clause.
40-6-331. Designation of certain streets or PTV paths for PTV operation; licensing requirements for PTV operation; establishment of operating standards for PTVs; local authority immunity; erection of signage; crossing streets under jurisdiction of Department of Transportation.

PART 4

MOPEDS

- 40-6-350. Traffic laws applicable to persons operating mopeds.

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- 40-6-351. Driver's license or permit required for certain operators.
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40-6-353. Operation over certain roads may be prohibited.
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PART 5

LOW-SPEED VEHICLES

- 40-6-360. Rights of persons operating low-speed vehicles.
40-6-361. Traffic laws applicable to low-speed vehicles.
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PART 6

PERSONAL TRANSPORTATION VEHICLE
TRANSPORTATION PLAN

- 40-6-363. Legislative intent.
40-6-364. Definitions.
40-6-365. Standards for local authorities to establish personal transportation vehicle transportation plans.
40-6-366. Acquisition of property for PTV lanes.
40-6-367. Part inapplicable to certain localities with prior ordinances governing PTV use.
40-6-368. Requirements for streets or highways on which joint use by regular vehicle traffic and PTVs permitted.
40-6-369. Manner in which PTVs may be driven.
40-6-369.1. Speed limits on streets authorized for PTV use.

Article 14

Effect of Chapter on Powers
of Local Authorities

- 40-6-370. Uniform state-wide application of chapter.
40-6-371. Powers of local authorities generally.
40-6-372. Adoption of chapter by local authorities.
40-6-373. Effect of future changes in chapter.
40-6-374. Form of adopting ordinance.
40-6-375. Citations for violations.

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| <p>Sec.
40-6-376. Prosecution under this chapter or local ordinance; double jeopardy.</p> <p style="text-align: center;">Article 15</p> <p style="text-align: center;">Serious Traffic Offenses</p> <p>40-6-390. Reckless driving.</p> <p>40-6-391. Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child.</p> <p>40-6-391.1. Entry of plea of nolo contendere; order to attend alcohol and drug course.</p> <p>40-6-391.2. Seizure and forfeiture of motor vehicle operated by habitual violator.</p> | <p>Sec.
40-6-391.3. Penalty for conviction for driving under influence of alcohol or drugs while driving school bus.</p> <p>40-6-392. Chemical tests for alcohol or drugs in blood.</p> <p>40-6-393. Homicide by vehicle.</p> <p>40-6-393.1. Feticide by vehicle; penalties.</p> <p>40-6-394. Serious injury by vehicle.</p> <p>40-6-395. Fleeing or attempting to elude police officer; impersonating law enforcement officer.</p> <p>40-6-396. Homicide by interference with official traffic-control device or railroad sign or signal; serious injury by interference with official traffic-control device or railroad sign or signal.</p> <p>40-6-397. Aggressive driving; penalty.</p> |
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Cross references. — Liability of persons rendering emergency care generally, §§ 31-11-8, 51-1-29, 51-1-30, and 51-1-30.1. Regulation of size, weight, and other elements of vehicles and loads on public highways, § 32-6-20 et seq. Liability of law enforcement officers for actions taken while performing duties at scene of emergency, § 35-1-7. Observance of laws by motor carriers, § 40-1-122. Georgia forest products trucking rules, § 46-1-1.

Editor's notes. — Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify"

laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

Ga. L. 1990, p. 2048, § 17, not codified by the General Assembly, provides: "Prosecution for any violation of Sections 4 and 5 of this Act occurring prior to January 1, 1991, is not affected or abated by this Act."

JUDICIAL DECISIONS

Constitutionality. — Uniform Rules of the Road Act, Ga. L. 1974, p. 633 (see O.C.G.A. § 40-6-1 et seq.), does not violate the Georgia Constitution by containing matter different from what is expressed in the title. *Head v. State*, 246 Ga. 360, 271 S.E.2d 452 (1980).

Purpose of chapter. — Statutory purpose of all the regulations codified as the Uniform Rules of the Road, Ga. L. 1974, p. 633, (see O.C.G.A. § 40-6-1 et seq.) is to promulgate the safe and expeditious movement of vehicular traffic on the high-

ways. *Crook v. State*, 156 Ga. App. 756, 275 S.E.2d 794 (1980).

No conflict with O.C.G.A. § 40-9-3. — Uniform Traffic Regulations Act, Ga. L. 1953, Nov.-Dec. Sess., p. 556, is not in irreconcilable conflict with the provisions of the Motor Vehicle Responsibility Act, Ga. L. 1951, p. 565, which confers upon the commissioner of public safety the power to cancel drivers' licenses. *Turmon v. Department of Pub. Safety*, 222 Ga. 843, 152 S.E.2d 884 (1967) (decided under former Code 1933, § 92A-6).

Violation of statute and ordinance. — Any violation of the Uniform Rules of the Road Act, Ga. L. 1974, p. 633 (see O.C.G.A. § 40-6-1 et seq.) and of a local ordinance may, at the discretion of the local prosecutor, be charged as a violation of the state statute or the local ordinance. *Diamond v. State*, 151 Ga. App. 690, 261 S.E.2d 434 (1979).

State court jurisdiction. — State court has jurisdiction over all misdemeanor offenses in county including violations of the Uniform Rules of the Road Act, Ga. L. 1974, p. 633 (see O.C.G.A.

§ 40-6-1 et seq.). *Diamond v. State*, 151 Ga. App. 690, 261 S.E.2d 434 (1979).

Traffic violation is negligence as a matter of law rather than issuable negligence as a matter of fact. *Mathis v. Mangum*, 166 Ga. App. 415, 304 S.E.2d 520 (1983).

Cited in *Mayor of Savannah v. Palmerio*, 242 Ga. 419, 249 S.E.2d 224 (1978); *Akin v. Hardison*, 245 Ga. 57, 262 S.E.2d 814 (1980); *Ray v. Parcel Delivery Co.*, 155 Ga. App. 531, 271 S.E.2d 670 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 68-16 are included in the annotations for this Code section.

Purpose of chapter. — Purpose of the Uniform Rules of the Road Act, Ga. L. 1974, p. 633 (see O.C.G.A. § 40-6-1 et seq.) is not essentially penal, but remedial and designed to promote public safety. 1975 Op. Att'y Gen. No. 75-117.

Suspension and retention of licenses of convicted racers. — Amendment to the Uniform Rules of the Road Act, having been approved by the Governor subsequent to approval of the Drivers Licensing Act, prevails over the Drivers Licensing Act to the extent that there is a conflict between the two statutes; thus, the department should continue to suspend and retain drivers licenses of persons convicted of racing in accordance

with the provisions of the Uniform Rules of the Road Act and disregard the inconsistent provisions of the Drivers Licensing Act which were approved prior to the Uniform Rules of the Road Act. 1975 Op. Att'y Gen. 75-117.

Permission required before city enacts ordinance. — City cannot enact an ordinance regulating parking on a state highway without first receiving permission of the Department of Transportation. 1971 Op. Att'y Gen. No. U71-3 (decided under former Code 1933, ch. 68-16).

Units subject to braking and inspection requirements. — Type of unit which is secured by a flexible, welded joint is a single unified motor vehicle and not two separate vehicles; as such, the unit is subject to the braking and inspection requirements imposed by law on motor vehicles. 1968 Op. Att'y Gen. No. 68-308 (decided under former Code 1933, ch. 68-16).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Driver's Failure to Maintain Proper Lookout, 40 POF2d 411.

Driver's Negligence in Backing Up, 46 POF2d 647.

ALR. — Right or duty to turn in violation of law of road to avoid traveler, or obstacle, 24 ALR 1304; 63 ALR 277; 113 ALR 1328.

Regulation of carriers by motor vehicle as affected by interstate commerce clause, 85 ALR 1136; 109 ALR 1245; 135 ALR 1358.

Power to restrict or interfere with access of abutter by traffic regulations, 73 ALR2d 689.

Entrapment to commit traffic offense, 34 ALR4th 1167.

ARTICLE 1

GENERAL PROVISIONS

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this article.

Motor vehicles operating on "public roads." — Highway is a public road and the terms "highways" and "public

highways," as used in the provisions regulating the operating of motor vehicles, mean "public roads" as distinguished from private ways. The meaning is not confined to the public highways which form the state highway system. *Powell v. State*, 193 Ga. 398, 18 S.E.2d 678 (1942) (decided under former Code 1933, § 68-303).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 220 et seq.

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 ALR 459; 23 ALR 418.

"Emergency rule" as applied to automobile or motorcycle drivers, 79 ALR 1277; 111 ALR 1019.

40-6-1. Observance of chapter required; punishment for violations generally; maximum fines for certain offenses.

(a) It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

(b) Unless a different maximum fine or greater minimum fine is specifically provided in this chapter for a particular violation, the maximum fine which may be imposed as punishment for a first offense of violating any lawful speed limit established by or pursuant to the provisions of Article 9 of this chapter by exceeding a maximum lawful speed limit:

(1) By five miles per hour or less shall be no dollars;

(2) By more than five but not more than ten miles per hour shall not exceed \$25.00;

(3) By more than ten but not more than 14 miles per hour shall not exceed \$100.00;

(4) By more than 14 but less than 19 miles per hour shall not exceed \$125.00;

(5) By 19 or more but less than 24 miles per hour shall not exceed \$150.00; or

(6) By 24 or more but less than 34 miles per hour shall not exceed \$500.00. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 23; Code 1933, § 68A-102, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2001, p. 770, § 1.)

Cross references. — For surcharges to or apportionment of fines in certain traffic offense cases, §§ 15-21-73, 15-21-93, 15-21-112, 15-21-131, 15-21-149, 36-15-9, 47-11-51, 47-14-50, 47-16-60, and 47-17-60. Provision that offenses under

jurisdiction of traffic violations bureau shall be classified as traffic violations rather than as misdemeanors, § 40-13-60.

Law reviews. — For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

JUDICIAL DECISIONS

Legislative intent. — Legislature has expressly limited the punishment prescribed in Ga. L. 1974, p. 633, § 1. *United States v. Walter*, 484 F. Supp. 183 (S.D. Ga. 1980).

O.C.G.A. § 40-6-1 cannot be the sole basis for a charge since the statute does not set out any proscribed conduct, but, instead, specifies the penalty for a violation of any provisions in O.C.G.A. Ch. 6, T. 40 which do not provide their own penalty. *State v. Nix*, 220 Ga. App. 651, 469 S.E.2d 497 (1996).

State court jurisdiction. — State court has jurisdiction over all misdemeanor offenses in county including violations of the Uniform Rules of the Road Act (see O.C.G.A. § 40-6-1 et seq.). *Diamond v. State*, 151 Ga. App. 690, 261 S.E.2d 434 (1979).

Compliance did not necessarily show ordinary care. — Compliance with Georgia's Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq., did not necessarily demonstrate that a defendant exercised ordinary care; in a case seeking damages for injuries arising from an accident in which an auto struck a parked garbage truck, a trial court did not err in admitting evidence regarding a safer location for the stop of the truck or in refusing to instruct the jury that if the truck's flashing hazard lights were on at the time of the collision then, pursuant to O.C.G.A. § 40-6-203(c), the driver and the employer could not have been found negligent. *Sinclair Disposal Serv. v. Ochoa*, 265 Ga. App. 172, 593 S.E.2d 358 (2004).

Familiarity with state highway manual. — Interpretation of signs and

signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with to the extent of imposing penal sanctions for disobedience thereof. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Punishment for violations. — Punishment schemes contemplated by O.C.G.A. § 40-6-1 are: (1) punishment for violations of sections that have not "otherwise declared" their own penalties will be as provided for in O.C.G.A. § 17-10-3; and (2) punishment for violations of sections that have criminalized certain acts and prescribed particular punishments will be controlled by the specific penalties imposed by such sections. *Chastain v. State*, 231 Ga. App. 225, 498 S.E.2d 792 (1998).

Fine of \$1,000 proper for speeding. — Trial court did not err in sentencing the defendant to a \$1,000 fine for speeding in violation of O.C.G.A. § 40-6-181(b)(2) because the defendant did not object to the state's failure to admit certified copies of the defendant's prior convictions, nor did the defendant dispute that the defendant had multiple convictions for traffic violations; when the trial court asked the defendant whether any of the defendant's previous violations occurred while the defendant was operating a motorcycle, the defendant implicitly admitted at least one prior conviction for speeding. *Jones v. State*, 308 Ga. App. 99, 706 S.E.2d 593 (2011).

Violation of self-explanatory traffic-control device. — All

traffic-control devices placed on the highway are presumed to be placed there by the authority of the State Highway Board (now State Transportation Board). Those which are self-explanatory are such that a violation thereof is a penal offense. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Incremental speeds not material to charge. — Accusation specified that the defendant was charged with exceeding the speed limit on a certain road on a certain day which was sufficient to put the defendant on notice that the defendant was being tried for speeding, O.C.G.A. § 40-6-181(b); greater speeds by specified increment affected only the punishment and were therefore not material allegations to prove the crime of speeding so that the allegation that defendant was traveling 127 mph was not a material averment that had to be proven. *Nye v. State*, 279 Ga. App. 347, 631 S.E.2d 386 (2006).

Crossing yellow line. — In the absence of any properly placed sign explaining the meaning thereof, the crossing of a yellow line by a motorist to get in the opposite lane of traffic is not of itself a penal offense. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Indictment naming wrong road did not support conviction. — Defendant's conviction for failure to keep the defen-

dant's vehicle within a single lane of traffic could not stand; although there was evidence to support the charge, the accusation filed against the defendant stated the wrong road where the violation occurred, and therefore, there was insufficient evidence to convict the defendant of the charge stated in the accusation. *Thrasher v. State*, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Sentence for speeding within authorized limits. — Defendant's sentence to serve 12 months for speeding in violation of O.C.G.A. § 40-6-181(b)(2) was within authorized limits; O.C.G.A. § 40-6-1(b) simply sets limits on fines that can be imposed as punishment for a first offense of speeding and the statute does not restrict the available punishment for speeding to a fine. *Jones v. State*, 308 Ga. App. 99, 706 S.E.2d 593 (2011).

Cited in *State v. Edwards*, 236 Ga. 104, 222 S.E.2d 385 (1976); *Berrian v. State*, 139 Ga. App. 571, 228 S.E.2d 737 (1976); *Peluso v. State*, 147 Ga. App. 266, 248 S.E.2d 546 (1978); *Gray v. State*, 156 Ga. App. 117, 274 S.E.2d 115 (1980); *Pfeiffer v. State*, 173 Ga. App. 374, 326 S.E.2d 562 (1985); *Ward v. State*, 188 Ga. App. 372, 373 S.E.2d 65 (1988); *Riddle v. State*, 202 Ga. App. 194, 413 S.E.2d 494 (1991); *Jones v. State*, 258 Ga. App. 337, 574 S.E.2d 398 (2002); *Smith v. State*, 270 Ga. App. 759, 608 S.E.2d 35 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Official signs. — Official traffic control signs, such as "Men Working," "Watch for Mowers," and "Survey Party," afford the same legal protection that is afforded by other official traffic control devices. 1970 Op. Att'y Gen. No. 70-55.

All-terrain vehicles operating on the highways of the State of Georgia are governed by the Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq. 2007 Op. Att'y Gen. No. 2007-3.

RESEARCH REFERENCES

ALR. — Right or duty to turn in violation of law of road to avoid traveler, or obstacle, 63 ALR 277; 113 ALR 1328.

40-6-2. Obedience to authorized persons directing traffic.

No person shall fail or refuse to comply with any lawful order or direction of any police officer, firefighter, police volunteer authorized

under Code Section 35-1-11, or school-crossing guard designated by a local law enforcement agency invested by law with authority to direct, control, or regulate traffic. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 24; Code 1933, § 68A-104, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 516, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 654, § 2; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11.)

Cross references. — Provisions regarding refusal to obey official request at fire or other emergency, § 16-10-30. Authority of school-crossing guards to direct

traffic, § 20-2-1131. Refusal to display driver's license upon demand by law enforcement officer, § 40-5-29.

JUDICIAL DECISIONS

Order to move vehicle lawful if given to owner, operator, or controller. — Order of the deputy sheriff to the defendant to move the wrecker was not a lawful order unless the defendant at the time was the owner, operator, or otherwise in control of the wrecker in question. *Carroll v. State*, 157 Ga. App. 112, 276 S.E.2d 265 (1981).

Attempt to comply with motorist's wishes provides no defense to failure to obey lawful directions of the deputy sheriff. *Carroll v. State*, 157 Ga. App. 113, 276 S.E.2d 267 (1981).

Directing traffic is official police function. — Because a police officer was directing traffic, and this activity necessarily is a police function, the officer was acting in the officer's official capacity at the time of a traffic accident, and the officer was entitled to assert official immunity as a defense to a claim of negligent conduct. *Sommerfield v. Blue Cross & Blue Shield, Inc.*, 235 Ga. App. 375, 509 S.E.2d 100 (1998).

Fact issue on whether officer gave order. — Because a genuine issue of fact existed on whether the defendant officer

ever told the plaintiff arrestee to park on the street in response to the arrestee's request that the officer move the police car so that the arrestee could enter the arrestee's driveway, and if the officer never did tell the arrestee to park on the street, or if the officer knew the arrestee could not hear the officer, not even arguable probable cause existed under O.C.G.A. § 40-6-2 for an arrest and granting the officer summary judgment on a false arrest claim was reversed. *Skop v. City of Atlanta*, 485 F.3d 1130 (11th Cir. 2007).

Jury properly instructed on statute. — In a suit by a driver who was injured when the driver ran into a house that was being moved, the trial court did not err in instructing the jury as to O.C.G.A. § 40-6-2; there was evidence that the driver failed to yield the right of way when confronted by a police car with flashing blue lights that was escorting the house. *Hersh v. Griffith*, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

Cited in *Easterling v. City of Glennville*, 694 F. Supp. 911 (S.D. Ga. 1986); *United States v. Benitez-Macedo*, 129 Fed. Appx. 506 (11th Cir. 2005).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 838.

40-6-3. Chapter refers to operation of vehicles on highways; exceptions.

(a) The provisions of this chapter relating to the operation of vehicles refer to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given Code section;

(2) The provisions of this chapter shall apply to a vehicle operated at shopping centers or parking lots or similar areas which although privately owned are customarily used by the public as through streets or connector streets;

(3) The provisions of this chapter relating to reckless driving, driving in violation of Code Section 40-6-391, and homicide by vehicle shall apply to vehicles operated upon highways and elsewhere throughout the state;

(4) The provisions of Code Sections 40-6-270, 40-6-271, and 40-6-272 shall apply upon the highways of this state, in all parking areas, and in all areas which are customarily open to the public and within 200 feet of all such highways, parking areas, and areas customarily open to the public;

(5)(A) The provisions of this chapter shall apply to a vehicle operated on any private property of this state which fronts on coastal marshlands or estuarine area as defined in Code Section 12-5-282, provided the owner of the private property files with the local law enforcement agency having primary jurisdiction to enforce the uniform rules of the road in such area:

(i) A petition requesting such local law enforcement agency to enforce the uniform rules of the road on such private property; and

(ii) Simultaneously files a plat with the petition delineating the location of the roads, streets, and common areas on such private property.

(B) The local law enforcement agency having primary jurisdiction to enforce the uniform rules of the road in such area shall enforce the uniform rules of the road on said private property at no cost to the owner of the private property or enter into a contractual agreement with the owner of the private property whereby the owner of the private property consents to pay part or all of the law enforcement expenses to such law enforcement agency.

(C) All persons operating vehicles on said roads, streets, and common areas shall be subject to all state and local traffic laws and

regulations the same as if said private roads and streets were public roads and streets.

(D) Any state or local law enforcement agency empowered to enforce the uniform rules of the road in such area shall have concurrent jurisdiction with the primary local law enforcement agency to enforce the rules of the road on said private property.

(E) At least 30 days' prior notice shall be given to users of said private roads, streets, and common areas by publication in the newspapers of general circulation in the area and by posting signs along the private roads and streets specifying that state and local law enforcement agencies will be enforcing the uniform rules of the road on said private roads, streets, and common areas; and

(6)(A) Subject to the approval of the governing authority of the county or municipality, the provisions of this chapter shall apply to a vehicle operated within a privately owned residential area located within the corporate boundaries of a municipality or located within the boundaries of a county, provided the owner of the privately owned residential area files with the governing authority of such county or municipality:

(i) A petition signed by 50 percent of the property owners located in said subdivision requesting the law enforcement agency of the county or municipality to enforce the uniform rules of the road within such privately owned residential area; and

(ii) A plat delineating the location of roads, streets, and common areas within the privately owned residential area.

(B) Upon approval by the governing authority of the county or municipality, the law enforcement agency of such county or municipality shall enforce the uniform rules of the road within said privately owned residential area.

(C) All persons operating vehicles on the roads, streets, and common areas of said privately owned residential property shall be subject to all state and local traffic laws and regulations the same as if such private roads, streets, and common areas were public roads and streets.

(D) At least 30 days' prior notice shall be given to users of said private roads, streets, and common areas by publication in a newspaper of general circulation in the area and by posting signs along the private road, streets, and common areas specifying that the county law enforcement agency or municipal law enforcement agency will be enforcing the uniform rules of the roads on said private roads, streets, and common areas.

(b) Notwithstanding the provisions of subsection (a) of this Code section, any law enforcement officer shall be authorized to write an accident report regarding any motor vehicle accident occurring on private property. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 22; Code 1933, § 68A-103, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 1000, § 11; Ga. L. 1985, p. 758, § 15; Ga. L. 1986, p. 834, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1000, § 1; Ga. L. 1992, p. 2294, § 2.)

Cross references. — Off-road vehicles, T. 40, C. 7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “and” was inserted at the end of division (a)(6)(A)(i).

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 152 (1992).

JUDICIAL DECISIONS

Exact location of operating motor vehicle under influence of an intoxicant is not a material element of this offense and the accusation is sufficiently certain if the accusation charges that the offense was committed in a particular county. *Felchlin v. State*, 159 Ga. App. 120, 282 S.E.2d 743 (1981); *Russell v. State*, 174 Ga. App. 436, 330 S.E.2d 175 (1985).

Exact location is not a material element of the offense of reckless driving and a fatal variance did not exist as to the charge even though the state failed to prove that the defendant drove recklessly in a certain block of road as alleged in the indictment. *Chavous v. State*, 205 Ga. App. 455, 422 S.E.2d 327 (1992).

Applicability of chapter. — Uniform Act Regulating Traffic or Highways applies to streets and highways within corporate limits of municipalities as well as without. *Richards & Assocs. v. Studstill*, 92 Ga. App. 853, 90 S.E.2d 56 (1955), rev'd on other grounds, 212 Ga. 375, 93 S.E.2d 3 (1956).

It is criminal offense to operate a motor vehicle under influence of intoxicants anywhere in state, and the place is, therefore, no longer a material element of the offense. *Flanders v. State*, 97 Ga. App. 779, 104 S.E.2d 538 (1958); *Walker v. State*, 201 Ga. App. 672, 411 S.E.2d 734, cert. denied, 201 Ga. App. 904, 411 S.E.2d 734 (1991).

Because: (1) O.C.G.A. § 40-6-391(a), by the statute's plain language, applied to any moving vehicle, and a golf cart was a

“vehicle” within the meaning of O.C.G.A. § 40-1-1(75); (2) the defendant stipulated at trial to driving the golf cart in Fayette County, making such a “moving vehicle” within the scope of O.C.G.A. § 40-6-391(a), and to being under the influence of alcohol while doing so; and (3) under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia, whether on a street, highway, or private property, the defendant's DUI conviction was upheld on appeal. *Simmons v. State*, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

In convictions of driving while under the influence, a jury charge did not create ambiguity and confusion, requiring reversal, by using the word “anywhere” rather than the word “elsewhere” because under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia. *Duprel v. State*, 301 Ga. App. 469, 687 S.E.2d 863 (2009).

“Highway” as a “public highway.” — To prove that a “highway” is a “public highway,” there must be proof that it was established in one of the ways enumerated in the case of *Southern Ry. v. Combs*, 124 Ga. 1004, 53 S.E. 508 (1906). *Baker v. State*, 92 Ga. App. 60, 87 S.E.2d 644 (1955).

Parking lot. — Trial court properly denied suppression of drug evidence obtained from a search of the defendant's person after a police officer conducted an investigatory stop of the defendant's vehicle and noted a strong odor of marijuana

as the officer stopped the vehicle based on a reasonable suspicion that the defendant was violating O.C.G.A. § 40-6-14(a) by the loud music emanating from the defendant's vehicle while parked in a convenience store parking lot pursuant to O.C.G.A. § 40-6-3(a)(2). *Jackson v. State*,

297 Ga. App. 615, 677 S.E.2d 782 (2009), cert. denied, No. S09C1461, 2009 Ga. LEXIS 409 (Ga. 2009).

Cited in *Madden v. State*, 252 Ga. App. 164, 555 S.E.2d 832 (2001); *Patton v. State*, 287 Ga. App. 18, 650 S.E.2d 733 (2007).

RESEARCH REFERENCES

ALR. — Applicability of regulations or rules governing vehicular traffic to drive-ways or other places not legal highways, 80 ALR 469.

Applicability, to operation of motor vehicle on private property, of legislation

making drunken driving a criminal offense, 29 ALR3d 938.

Motorist's liability for signaling other vehicle or pedestrian to proceed, or to pass signaling vehicle, 14 ALR5th 193.

40-6-4. Persons riding animals or driving animal drawn vehicles.

Every person riding an animal or driving an animal drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 27; Code 1933, § 68A-105, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 429.

C.J.S. — 60A C.J.S., Motor Vehicles, § 883.

ALR. — Liability for damage to motor

vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street, 49 ALR4th 653.

40-6-5. Persons working on highways.

Unless specifically made applicable, the provisions of this chapter, except those contained in Article 15 of this chapter, shall not apply to authorized persons, teams, motor vehicles, and other equipment while actually engaged in work upon a highway but shall apply to such persons and vehicles when traveling to or from such work. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 25; Code 1933, § 68A-106, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Term "work" encompasses both construction and repair. *Myerholtz v. Conway*,

108 Ga. App. 697, 134 S.E.2d 513 (1963), overruled on other grounds, *Aultman v.*

Spellmeyer, 111 Ga. App. 769, 143 S.E.2d 403 (1965).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 421.

C.J.S. — 60A C.J.S., Motor Vehicles, § 889.

40-6-6. Authorized emergency vehicles.

(a) The driver of an authorized emergency vehicle or law enforcement vehicle, when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this Code section.

(b) The driver of an authorized emergency vehicle or law enforcement vehicle may:

(1) Park or stand, irrespective of the provisions of this chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the maximum speed limits so long as he or she does not endanger life or property; and

(4) Disregard regulations governing direction of movement or turning in specified directions.

(c) The exceptions granted by this Code section to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal and use of a flashing or revolving red light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, except that a vehicle belonging to a federal, state, or local law enforcement agency and operated as such shall be making use of an audible signal and a flashing or revolving blue light with the same visibility to the front of the vehicle.

(d)(1) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons.

(2) When a law enforcement officer in a law enforcement vehicle is pursuing a fleeing suspect in another vehicle and the fleeing suspect damages any property or injures or kills any person during the pursuit, the law enforcement officer's pursuit shall not be the proximate cause or a contributing proximate cause of the damage, injury, or death caused by the fleeing suspect unless the law enforcement officer acted with reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit.

Where such reckless disregard exists, the pursuit may be found to constitute a proximate cause of the damage, injury, or death caused by the fleeing suspect, but the existence of such reckless disregard shall not in and of itself establish causation.

(3) The provisions of this subsection shall apply only to issues of causation and duty and shall not affect the existence or absence of immunity which shall be determined as otherwise provided by law.

(4) Claims arising out of this subsection which are brought against local government entities, their officers, agents, servants, attorneys, and employees shall be subject to the procedures and limitations contained in Chapter 92 of Title 36.

(e) It shall be unlawful for any person to operate an authorized emergency vehicle with flashing lights other than as authorized by subsection (c) of this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 26; Code 1933, § 68A-107, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 855, § 1; Ga. L. 2002, p. 579, § 4.)

Cross references. — Operation of ambulances and ambulance services generally, T. 31, C. 11. Equipment of law enforcement and emergency vehicles, § 40-8-90 et seq.

Law reviews. — For article, “The Fall and Rise of Official Immunity,” see 25 Ga. St. B.J. 93 (1988). For article, “Local Government Law,” see 53 Mercer L. Rev. 389 (2001). For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For article, “Police Pursuits: A

Comprehensive Look at the Broad Spectrum of Police Pursuit Liability and Law,” see 57 Mercer L. Rev. 511 (2006). For annual survey on local government law, see 64 Mercer L. Rev. 213 (2012). For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 295 (1995). For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 243 (2002).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION

JURY INSTRUCTIONS AND ISSUES

General Consideration

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1933, § 68-301, and Ga. L. 1953, Nov.-Dec. Sess., p. 556, are included in the annotations for this Code section.

Construction with O.C.G.A. § 40-6-74. — Read together, O.C.G.A. §§ 40-6-6 and 40-6-74 mandate that a driver has a duty to yield the right of way

to an authorized law enforcement vehicle when the vehicle approaches making use of an audible signal and visual signal under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, and furthermore the statutes do not restrict an “audible signal” to only sirens, and § 40-6-6 does not apply only when the authorized law enforcement vehicle is responding to an emergency call; accordingly, it was proper to give instructions as to §§ 40-6-6 and

40-6-74 in a suit by a driver who ran into a house while the house was being moved and escorted by police vehicles. *Hersh v. Griffith*, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

“Authorized emergency vehicle” must be certified. — In a negligence action arising out of a motor vehicle collision, the court erred by charging the jury that the jury could find the defendant to be operating an “authorized emergency vehicle” privileged to disregard maximum speed limits and other traffic laws, since the defendant admitted the defendant was not “certified,” as called for by O.C.G.A. § 40-1-1(5), and had not complied with the certification process. *Pryor v. Phillips*, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

Time to address causation. — Nothing in the language of O.C.G.A. § 40-6-6 on emergency vehicles requires a court to address the issue of causation before dealing with the public official defendants’ immunity from liability. *Cameron v. Lang*, 274 Ga. 122, 549 S.E.2d 341 (2001).

Statute designed for innocent persons, not suspects. — Appellate court erred in denying city’s motion for summary judgment in a police pursuit case as the statute stating that a city could be held liable for injuries sustained during a police pursuit, under certain circumstances, applied only to innocent persons who were injured and not to fleeing suspects unless it was shown the officer intended to injure the suspect; since no such showing was made, the parents of the fleeing suspect who was killed trying to drive away from the officer could not recover from the city. *City of Winder v. McDougald*, 276 Ga. 866, 583 S.E.2d 879 (2003).

Cited in *Karp v. Niver*, 142 Ga. App. 241, 235 S.E.2d 589 (1977); *Walker v. Burke County*, 149 Ga. App. 704, 256 S.E.2d 100 (1979); *Jones v. Ray*, 159 Ga. App. 734, 285 S.E.2d 42 (1981); *Keener v. Kimble*, 170 Ga. App. 674, 317 S.E.2d 900 (1984); *Mills v. City of Atlanta*, 175 Ga. App. 8, 332 S.E.2d 319 (1985); *Martin v. Georgia Dep’t of Pub. Safety*, 257 Ga. 300, 357 S.E.2d 569 (1987); *Banks v. Patton*, 202 Ga. App. 168, 413 S.E.2d 744 (1992); *Jackson v. State*, 223 Ga. App. 27, 477

S.E.2d 28 (1996); *Morgan v. Causey*, 910 F. Supp. 651 (M.D. Ga. 1996); *Cameron v. Lang*, 274 Ga. 122, 549 S.E.2d 341 (2001); *Roundtree v. Cloud*, 250 Ga. App. 334, 551 S.E.2d 770 (2001); *Brewer v. Atlanta South 75, Inc.*, 288 Ga. App. 809, 655 S.E.2d 631 (2007); *Rahmaan v. DeKalb County*, 300 Ga. App. 572, 685 S.E.2d 472 (2009); *Westmoreland v. State*, 287 Ga. 688, 699 S.E.2d 13 (2010).

Application

Legislative intent. — Legislature intended by former Code 1933, § 68-301 to do two things: (1) to give the drivers of certain authorized emergency vehicles the right to travel when occasion required it at a speed in excess of the limit fixed by the provision applicable to motor vehicles generally; and (2) to protect the public on highways, and even those riding in the vehicles thus favored, from reckless disregard of their safety by the drivers of these privileged vehicles. *Archer v. Johnson*, 90 Ga. App. 418, 83 S.E.2d 314 (1954) (decided under former Code 1933, § 68-301).

Innocent citizens must not be unreasonably endangered. — While it is most desirable and patently to the public interest that officers of the law proceed with much promptness and speed in overtaking and apprehending the violators of the law, and that the officers need not be answerable for simply exceeding the speed limits fixed by statute, yet the life and limb of innocent citizens must not be unreasonably endangered in the process. *Archer v. Johnson*, 90 Ga. App. 418, 83 S.E.2d 314 (1954) (decided under former Code 1933, § 68-301).

Georgia Court of Appeals concludes that the protection afforded innocent persons pursuant to O.C.G.A. § 40-6-6(d)(2) applies whether the innocent person is outside the vehicle or is an innocent passenger in the vehicle. *Clayton County v. Austin-Powell*, 321 Ga. App. 12, 740 S.E.2d 831 (2013).

Determining driver’s regard for others’ safety. — Conditions expressed in subsection (c) of Ga. L. 1953, Nov.-Dec. Sess., p. 556, when met, are to be taken into consideration in determining whether the driver of an authorized emergency vehicle exercising these statutory

Application (Cont'd)

privileges has driven with due regard for the safety of others or has recklessly disregarded the safety of others. *Poole v. City of Louisville*, 107 Ga. App. 305, 130 S.E.2d 157 (1963) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Determining the emergency nature of a call. — In determining whether a vehicle is driven in response to an emergency call, it is not only material, but essential, to consider such facts as disclose the nature of the call which was being answered. This involves both a statement of the substance of the call as the call came into the hospital and the substance or terms of the call as communicated to the driver of the ambulance. *City of Macon v. Smith*, 117 Ga. App. 363, 160 S.E.2d 622 (1968) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

No marking of police cars as escort vehicles. — In a suit by a driver who ran into a house while the house was being moved and escorted by police vehicles, there was no merit to the driver's argument that the police vehicles had to be marked as escort vehicles; that would be contrary to O.C.G.A. §§ 40-6-6 and 40-8-91, which mandate proper markings for police cars and do not allow the vehicles to have amber lights. *Hersh v. Griffith*, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

Vehicles in funeral procession. — Vehicle traveling in funeral procession is not within one of the categories of emergency vehicles. *Gaudry v. Brandt*, 119 Ga. App. 237, 166 S.E.2d 737 (1969) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Privileges and conditions of operation. — Ga. L. 1953, Nov.-Dec. Sess. p. 556 grants special privileges in operation of emergency vehicles, but sets out conditions for operation (which include the use of sirens and lights), and provides for liability when there has been a reckless disregard for the safety of others. Violation does not necessarily make the driver of the emergency vehicle liable, but it keeps open the issue of causation, which otherwise would be foreclosed. *City of Winterville v. Strickland*, 127 Ga. App.

716, 194 S.E.2d 623 (1972) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Evidence that a fire rescue emergency vehicle's lights were working properly at the time of an accident and testimony that the lights "were in compliance with Georgia law" was sufficient for a jury to have found that the lights were visible from a distance of 500 feet, in compliance with O.C.G.A. § 40-6-6 for purposes of allowing the vehicle to proceed through a red light; accordingly, a trial court properly denied a driver's motion for a directed verdict and judgment notwithstanding the verdict pursuant to O.C.G.A. § 9-11-50(a) arising from a collision that occurred at the intersection involving the driver's vehicle and the emergency vehicle. *Wynn v. City of Warner Robins*, 279 Ga. App. 42, 630 S.E.2d 574 (2006).

Officer failing to engage siren negligent. — An officer whose emergency lights were in operation, but who failed to engage the officer's emergency siren before taking off in pursuit of an errant motor vehicle, was negligent. *Herren v. Abba Cab Co.*, 155 Ga. App. 443, 271 S.E.2d 11 (1980).

Immunity of deputy. — After a sheriff's deputy caused a collision with another vehicle when the deputy failed to use the deputy's blue lights or siren when responding to an emergency call, the deputy was entitled to immunity in the absence of insurance purchased by the county which would protect the deputy. *Logue v. Wright*, 260 Ga. 206, 392 S.E.2d 235 (1990).

Deputy sheriff's high-speed response to an emergency call was a discretionary act which was protected by sovereign immunity even if the deputy acted negligently. *Gilbert v. Richardson*, 264 Ga. 744, 452 S.E.2d 476 (1994).

Injury resulting from police officer's high speed pursuit. — Fact an officer was performing the officer's professional duty in pursuing a suspect did not preclude the imposition of liability; the decision to initiate or continue pursuit of a suspect could be negligent when heightened risk of injuries to third parties was unreasonable in relation to the interest in apprehending the suspect so that genuine issues of material fact existed as to the

reasonableness of the officer's conduct. *Mixon v. City of Warner Robins*, 264 Ga. 385, 444 S.E.2d 761 (1994), superseded by statute as stated in *City of Winder v. McDougald*, 276 Ga. 866, 583 S.E.2d 879 (2003). But see *Pearson v. City of Atlanta*, 231 Ga. App. 96, 499 S.E.2d 89 (1998), overruled on other grounds by *Strength v. Lovett*, 311 Ga. App. 35, 714 S.E.2d 723 (2011); *Thompson v. Payne*, 216 Ga. App. 217, 453 S.E.2d 803 (1995).

Officer could not be held liable in negligence after the evidence showed that the officer balanced the risks involved in pursuit of a fleeing vehicle and did not violate the principles set forth in O.C.G.A. § 40-6-6. *Wilson v. City of Atlanta*, 223 Ga. App. 144, 476 S.E.2d 892 (1996).

Officer's actions of slowing before going through a red light, exceeding the speed limit during light or nonexistent traffic, and disregarding regulations governing direction of traffic movement when oncoming traffic was light or nonexistent, as a matter of law, did not constitute a "reckless disregard" of law enforcement procedures, and were actions expressly authorized by O.C.G.A. § 40-6-6. *Pearson v. City of Atlanta*, 231 Ga. App. 96, 499 S.E.2d 89 (1998), overruled on other grounds by *Strength v. Lovett*, 311 Ga. App. 35, 714 S.E.2d 723 (2011).

Trial court erred in denying summary judgment pursuant to O.C.G.A. § 9-11-56(c) to a city and the city's employees in a wrongful death action; a police officer's actions were not the proximate cause of a decedent's death during a crash with a vehicle which was fleeing from police at high speed, and therefore O.C.G.A. § 40-6-6(d)(2) did not apply. *City of Pooler v. Edenfield*, 263 Ga. App. 278, 587 S.E.2d 408 (2003).

Deputy who was involved in a high-speed chase with a suspect was not liable for injuries a motorist sustained when the suspect's vehicle hit the motorist's vehicle because the deputy was performing a discretionary function when the deputy decided to pursue the suspect and the deputy did not act in reckless disregard of proper law enforcement procedures. *Standard v. Hobbs*, 263 Ga. App. 873, 589 S.E.2d 634 (2003).

In an arrestee's 42 U.S.C. § 1983 suit

against a lead pursuit deputy and the supervisor for using excessive force to stop the arrestee's car during a high-speed chase, the arrestee's negligence claim against the county was not precluded by O.C.G.A. § 40-6-6(d)(2) because the claim was not based on the officers' decision to initiate and pursue a high-speed chase, but rather, was based on the officers' decisions to ram the arrestee's vehicle; the right to ram a vehicle was not one of the specific "exceptional rights" granted to pursuing officers under the statute. *Harris v. Coweta County*, No. 3:01-CV-148-WBH, 2003 U.S. Dist. LEXIS 27348 (N.D. Ga. Sept. 25, 2003).

Because police officers followed procedures in pursuing an individual in a high-speed chase, the officers did not violate O.C.G.A. § 40-6-6; consequently, because O.C.G.A. § 50-21-24(6) provided the Georgia Department of Public Safety (DPS) with immunity from liability for injuries resulting from the pursuit, the trial court properly granted summary judgment to the DPS. *Blackston v. Ga. Dep't of Pub. Safety*, 274 Ga. App. 373, 618 S.E.2d 78 (2005).

Whether a police officer disregarded traffic rules, pursuant to O.C.G.A. § 40-6-6(d)(2), while engaged in a high-speed pursuit of a fleeing suspect, did not change the fact that the decision to pursue the suspect was a discretionary one for which the officer was entitled to official immunity against a negligence action asserted by the individuals who were injured in a car that was involved in an accident as a result of the chase. *Hanse v. Phillips*, 276 Ga. App. 558, 623 S.E.2d 746 (2005).

Arrestee's negligence and battery claims against a deputy and other law enforcement officers failed because the arrestee was unable to show that the deputy acted with actual malice or actual intent to cause injury, which showing was required under Georgia case law discussing O.C.G.A. § 40-6-6(d)(2), when the deputy bumped the arrestee's car to stop the car after the arrestee led the deputy on a six-minute, 10-mile high-speed chase. *Harris v. Coweta County*, 261 Fed. Appx. 213 (2008) (Unpublished).

Because the legislature enacted

Application (Cont'd)

O.C.G.A. § 40-6-6(d)(2) to limit liability when a fleeing suspect injures an innocent person, the legislature did not intend simultaneously to expand liability to cover injuries to the fleeing suspect. The fleeing suspect may be able to recover for the suspect's own injuries if an officer acts with an actual intent to cause injury as the phrase "actual intent to cause injury," which contains aspects of malice, means an actual intent to cause harm to the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury. *Harris v. Coweta County*, 261 Fed. Appx. 213 (2008) (Unpublished).

In a wrongful death action by a decedent's estate and her children against the county sheriff, the relevant conduct supporting a finding of proximate cause under O.C.G.A. § 40-6-6 was the decision of the sheriff's deputy to initiate or continue pursuing a fleeing suspect, not how the deputy drove the vehicle during the course of the pursuit. Thus, the trial court did not err in denying summary judgment on proximate cause grounds when there was some evidence from which a reasonable jury could have concluded that the deputy chose to continue the pursuit with conscious indifference to whether continuing the pursuit violated proper law enforcement procedures. *Strength v. Lovett*, 311 Ga. App. 35, 714 S.E.2d 723 (2011), cert. denied, No. S11C1794, 2011 Ga. LEXIS 979 (Ga. 2011).

Trial court erred in granting summary judgment to the city because genuine issues of material fact remained as to whether, under O.C.G.A. § 40-6-6(d)(2), the officer acted with reckless disregard of proper law enforcement procedures and the officer's actions were thus the proximate cause of the collision between the fleeing suspect and the driver. The driver's and passenger's affidavits were sufficient to create genuine issues of material fact regarding whether the officer acted with reckless disregard for proper law enforcement procedures in the officer's pursuit, which may be found to constitute a proximate cause of the driver's injuries. *Ray v. City of Griffin*, 318 Ga. App. 426, 736 S.E.2d 110 (2012).

Discretion applies to driver of ambulance. — Public employee's act of driving an ambulance was a discretionary act and, thus, the employee could not be held liable when the employee collided the ambulance with another vehicle while responding in the ambulance to an emergency call, even though the public employee may have been driving the ambulance negligently, as the law suspended the mechanical application of certain traffic rules and left the employee with the discretion to determine how to best respond to an emergency while driving the ambulance; accordingly, the trial court properly granted summary judgment to the employee after a wrongful death action was filed against the employee arising out of the collision. *Smith v. Bulloch County Bd. of Comm'rs*, 261 Ga. App. 667, 583 S.E.2d 475 (2003).

Reckless disregard for proper law enforcement procedures in high speed pursuit. — After the plaintiff in a wrongful death action presented some evidence that the defendant, a deputy sheriff, acted with reckless disregard for proper law enforcement procedures at the time the officer engaged in a high speed pursuit, the trial court erred in granting summary judgment to the defendant. *Lang v. Becham*, 243 Ga. App. 132, 530 S.E.2d 746 (2000).

No waiver of immunity. — Because O.C.G.A. § 40-6-6 applies only when a defendant's actions are not entitled to immunity, the statute had no application in an action arising from an accident occurring when the defendant officer was within the scope of the officer's official authority while pursuing a suspected stolen vehicle. *Williams v. Solomon*, 242 Ga. App. 807, 531 S.E.2d 734 (2000).

In a tort action for personal injuries and property damage arising from an auto collision filed against a city, because the facts did not involve an officer's pursuit of a fleeing suspect, or damages caused by a fleeing suspect, O.C.G.A. § 40-6-6 did not apply to the action and, thus, the trial court erred in relying on the statute as a ground for granting summary judgment to the city on sovereign immunity grounds. *Weaver v. City of Statesboro*, 288 Ga. App. 32, 653 S.E.2d 765 (2007), cert. denied,

2008 Ga. LEXIS 221 (Ga. 2008).

Jury Instructions and Issues

Charge of violation against arresting officer. — In prosecution of a case involving traffic violations, since the arresting officer's guilt or innocence of the offense of violating O.C.G.A. § 40-6-6 was not an issue, the trial court did not abuse the court's discretion in curtailing the defendant's cross-examination of the officer regarding such a violation. *Horton v. State*, 206 Ga. App. 242, 424 S.E.2d 882 (1992).

Charge proper. — Trial court did not err in failing to give requested jury instructions by a driver whose vehicle was involved in a collision with a city fire rescue van as the trial court's instructions under O.C.G.A. §§ 40-6-6 and 40-6-20(a) properly allowed the jury to determine whether the rescue van was an authorized emergency vehicle that complied with § 40-6-6, and the instructions also adequately informed the jury that the city had the burden of proof on the issue. *Wynn v. City of Warner Robins*, 279 Ga. App. 42, 630 S.E.2d 574 (2006).

Arresting officers have broad authority. — Former Code 1933, § 68-301 was but a modern expression of the doctrine that arresting officers, "the ministers of justice," have a broad scope of authority and freedom of action while in

the performance of the officers very responsible functions. *Archer v. Johnson*, 90 Ga. App. 418, 83 S.E.2d 314 (1954) (decided under former Code 1933, § 68-301).

Jury question whether proper care exercised. — Neither proceeding past signal, nor exceeding speed limit by emergency vehicle, is of itself negligence. But whether the care required by law was exercised in doing either of these things will generally be a question for the jury as are other questions of negligence. *Bynes v. Stafford*, 106 Ga. App. 406, 127 S.E.2d 159 (1962) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Jury question on whether passenger in stolen vehicle was innocent person. — Trial court erred by granting summary judgment to a county in a wrongful death action because there existed issues of fact as to whether the passenger in a stolen vehicle was an innocent person killed during the officer's pursuit of a fleeing suspect. *Clayton County v. Austin-Powell*, 321 Ga. App. 12, 740 S.E.2d 831 (2013).

Error to instruct failure to stop negligence per se. — Trial judge erred in instructing the jury that it was negligence per se for an ambulance, even on an emergency call, to fail to stop at a traffic control light when the color was red. *Royal Cab. Co. v. Hendrix*, 96 Ga. App. 44, 99 S.E.2d 355 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 224, 296 et seq.

Am. Jur. Proof of Facts. — Negligent Operation of Emergency Vehicle, 10 POF3d 203

C.J.S. — 60A C.J.S., Motor Vehicles, § 870 et seq.

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 ALR 459; 23 ALR 418.

Validity of statute or ordinance giving

right of way in streets or highways to certain classes of vehicles, 38 ALR 24.

Liability for personal injury or damage from operation of fire department vehicle, 82 ALR2d 312.

Liability arising from accidents involving police vehicles, 83 ALR2d 383.

Liability of governmental unit or its officer for injury or damage from operation of vehicle pursued by police, 83 ALR2d 452.

40-6-7. Operation of motor vehicles in parades.

Notwithstanding any other provisions of law, it shall be lawful to operate motor vehicles and motorcycles in parades although such motor

vehicles and motorcycles and their operators and passengers do not meet the necessary requirements of law, especially with respect to flashing lights, sirens, and safety equipment. This Code section shall be applicable only in the event that the local authority which has the power to issue parade permits, at its discretion, authorizes the operation of such motor vehicles and motorcycles after it has been determined that the operation of such motor vehicles and motorcycles will not endanger the lives, safety, or property of other participants in the parade, bystanders, or other persons. The authorization for vehicles to be operated in parades as exceptions to otherwise required provisions of law shall extend to only such time as the vehicles are actually engaged in the parade and in the return to the marshaling area. At all times, such vehicles shall be operated by a person properly licensed to operate such vehicles. Such motor vehicles and motorcycles covered under this Code section shall be operated in accordance with all provisions of law when traveling to and from a parade site and at all other times when not directly participating in a parade. (Ga. L. 1974, p. 446, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Operation of motorcycles generally, § 40-6-310 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 151, 288.

ALR. — Unlawful parade as riot, 9 ALR 552.

Validity, construction, and application of state or local enactments regulating parades, 80 ALR5th 255.

40-6-8. Rights of owners of real property.

Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as matter of right, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or from otherwise regulating such use as may seem best to such owner. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 30; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 295.

ALR. — Validity of statute or ordinance

forbidding running of automobile so as to inflict damage or injury, 47 ALR 255.

40-6-9. Challenges to speed limits and other traffic regulations established or enforced by local governing authorities.

(a) As used in this Code section, the term "speed limits" shall be construed to refer to and include stop lights, stop signs, slow signs, yield signs, and any and every other light, device, or sign which may be used to impede, slow, stop, or regulate the speed of motor vehicles on the public highways.

(b) Any provisions of this chapter to the contrary notwithstanding, whenever any complaint is made to the Governor that any speed limit established by any county or municipal authority is arbitrary or unreasonable, or upon any complaint being made to the Governor that any speed limit established by the state or by any county or municipal governing authority is being enforced primarily for the collection of revenue rather than for purposes of public safety, the Governor may, in his discretion, direct that an investigation and any necessary studies be commenced by the commissioner of public safety or his delegate who shall make a report thereon together with his recommendations as to whether the state should suspend the authority of the applicable local county or municipal governing authorities to enforce speed limits upon any state and federal highways lying within the jurisdiction of such authorities. Upon receipt of a report accompanied by recommendations that the power to enforce speed limits be restricted, the Governor shall furnish a copy of such report to the local authorities affected thereby, together with notice of hearing on the allegations of the report made by the commissioner of public safety or his delegate. Such hearing may be held at such time and such place as may be determined by the Governor but shall not be held less than ten days after notice to the local governing authorities. Such hearing shall be conducted before a board to be composed of the Governor, the Secretary of State, and an appointee of the Governor who is not the Attorney General who shall be reimbursed for the actual and necessary expenses pertaining to their services on the board but who shall receive no other additional compensation for their services thereon. Upon determination by the board that the speed limits established by the county or municipal governing authorities against whom complaint has been brought are either unreasonable or that speed limits are being primarily enforced for the collection of revenue rather than for purposes of public safety, the Governor shall issue his executive order suspending the power of such local governing authority to enforce speed limits on state or federal highways lying within its jurisdiction or on any particular such highway. In the event that this power is suspended, the Governor shall direct the commissioner of public safety to enforce the speed limits on such highways.

(c) At intervals of not less than six months, any governing authority affected by subsection (b) of this Code section and by an executive order

issued in accordance with subsection (b) of this Code section may, upon a change of circumstances being shown to the Governor, petition the Governor for reconsideration, whereupon the Governor, in his discretion, may direct the commissioner of public safety or his delegate to inquire into such change of circumstances and report the same to him together with any recommendations for modification of the Governor's previous order; and the Governor, in his discretion, may order a new hearing on the matter before the board or may, without hearing, modify or revoke his previous executive order.

(d) Any provisions of this chapter to the contrary notwithstanding, when any complaint is made to the Governor that any traffic law, ordinance, or regulation, other than speed regulations for which provision has been made in subsection (b) of this Code section, established by any county or municipal authority is arbitrary or unreasonable, or upon any complaint being made to the Governor that any traffic law, ordinance, or regulation established by the state or by any county or municipal governing authority, other than speed regulations for which provision has been made in subsection (b) of this Code section, is being enforced primarily for the collection of revenue rather than for purposes of public safety, the Governor may, in his discretion, direct that an investigation and any necessary studies be commenced by the commissioner of public safety or his delegate who shall make a report thereon together with his recommendations as to whether the state should suspend the authority of the applicable local county or municipal governing authorities to enforce traffic laws, ordinances, or regulations upon any state and federal highways lying within the jurisdiction of such authorities. Upon receipt of a report accompanied by recommendations that the power to enforce traffic laws, ordinances, and regulations be restricted, the Governor shall furnish a copy of such report to the local authorities affected thereby, together with notice of a hearing on the allegations of the report made by the commissioner of public safety or his delegate. Such hearing may be held at such time and at such place as may be determined by the Governor but shall not be less than ten days after notice to the local governing authorities. This hearing shall be conducted before a board to be composed of the Governor, the Secretary of State, and an appointee of the Governor who is not the Attorney General who shall be reimbursed for the actual and necessary expenses pertaining to their services on the board but who shall receive no other additional compensation for their services thereon. Upon the determination by the board either that traffic laws, ordinances, or regulations, other than speed regulations for which provision has been made in subsection (b) of this Code section, established by the county or municipal governing authority against whom complaint has been brought are unreasonable or that traffic laws, ordinances, or regulations established by the state or by any county or

municipal governing authority are being primarily enforced for the collection of revenue rather than for purposes of public safety, the Governor shall issue his executive order suspending the power of such local governing authority to enforce traffic laws, ordinances, and regulations on state or federal highways lying within its jurisdiction or on any particular such highway. In the event that this power is suspended, the Governor shall direct the commissioner of public safety to enforce the traffic laws and regulations on such highways.

(e) At intervals of not less than six months, any governing authority affected by subsection (d) of this Code section and by an executive order issued in accordance with subsection (d) of this Code section may, upon a change of circumstances being shown to the Governor, petition the Governor for reconsideration, whereupon the Governor, in his discretion, may direct the commissioner of public safety or his delegate to inquire into such change of circumstances and report the same to him together with any recommendations for modification of the Governor's previous executive order; and the Governor, in his discretion, may order a new hearing on the matter before the board or may, without hearing, modify or revoke his previous executive order. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 50; Ga. L. 1963, p. 461, § 1; Ga. L. 1968, p. 1422, § 1; Ga. L. 1975, p. 1582, § 4; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 426, § 1; Ga. L. 1990, p. 2048, § 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, a comma was deleted following the second “of this

Code section” near the beginning of subsection (e).

JUDICIAL DECISIONS

Cited in *Noble v. State*, 283 Ga. App. 81, 640 S.E.2d 666 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 231.

40-6-10. Insurance requirements for operation of motor vehicles generally.

(a)(1) As used in this Code section, the term “mobile electronic device” means a portable computing and communication device that has a display screen with touch input or a miniature keyboard.

(1.1) Upon the request of the insured, an insurer may issue a verification as to the existence of minimum motor vehicle liability insurance coverage as required under Chapter 34 of Title 33 in an electronic format to a mobile electronic device to the extent available.

This paragraph shall not require an insurer to provide such verification of coverage in real time.

(1.2) The owner or operator of a motor vehicle for which minimum motor vehicle liability insurance coverage is required under Chapter 34 of Title 33 shall keep proof or evidence of required minimum insurance coverage in the vehicle at all times during the operation of the vehicle. The owner of a motor vehicle shall provide to any operator of such vehicle proof or evidence of required minimum insurance coverage for the purposes of compliance with this subsection. The proof or evidence of required minimum insurance coverage required by this subsection may be produced in either paper or electronic format. Acceptable electronic formats include a display of electronic images on a mobile electronic device.

(2) The following shall be acceptable proof of insurance on a temporary basis:

(A) If the policy providing such coverage was applied for within the last 30 days, a current written binder for such coverage for a period not exceeding 30 days from the date such binder was issued shall be considered satisfactory proof or evidence of required minimum insurance coverage;

(B) If the vehicle is operated under a rental agreement, a duly executed vehicle rental agreement shall be considered satisfactory proof or evidence of required minimum insurance coverage; and

(C) If the owner acquired ownership of the vehicle within the past 30 days, if the type of proof described in subparagraph (A) of this paragraph is not applicable but the vehicle is currently effectively provided with required minimum insurance coverage under the terms of a policy providing required minimum insurance coverage for another motor vehicle, then a copy of the insurer's declaration of coverage under the policy providing such required minimum insurance coverage for such other vehicle shall be considered satisfactory proof or evidence of required minimum insurance coverage for the vehicle, but only if accompanied by proof or evidence that the owner acquired ownership of the vehicle within the past 30 days.

(2.1) If the vehicle is insured under a fleet policy as defined in Code Section 40-2-137 providing the required minimum insurance coverage or if the vehicle is engaged in interstate commerce and registered under the provisions of Article 3A of Chapter 2 of this title, the insurance information card issued by the insurer shall be considered satisfactory proof of required minimum insurance coverage for the vehicle.

(2.2) If the vehicle is insured under a certificate of self-insurance issued by the Commissioner of Insurance providing the required

minimum insurance coverage under which the vehicle owner did not report the vehicle identification number to the Commissioner of Insurance, the insurance information card issued by the Commissioner of Insurance shall be considered satisfactory proof of required minimum insurance coverage for the vehicle, but only if accompanied by a copy of the certificate issued by the Commissioner of Insurance.

(3) The requirement under this Code section that proof or evidence of minimum liability insurance be maintained in a motor vehicle at all times during the operation of the vehicle or produced in electronic format shall not apply to the owner or operator of any vehicle for which the records or data base of the Department of Revenue indicates that required minimum insurance coverage is currently effective.

(4) Except as otherwise provided in paragraph (7) of this subsection, any person who fails to comply with the requirements of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both.

(5) Every law enforcement officer in this state shall determine if the operator of a motor vehicle subject to the provisions of this Code section has the required minimum insurance coverage every time the law enforcement officer stops the vehicle or requests the presentation of the driver's license of the operator of the vehicle.

(6) If a law enforcement officer of this state determines that the owner or operator of a motor vehicle subject to the provisions of this Code section does not have proof or evidence of required minimum insurance coverage, the arresting officer shall issue a uniform traffic citation for operating a motor vehicle without proof of insurance. If the court or arresting officer determines that the operator is not the owner, then a uniform traffic citation may be issued to the owner for authorizing the operation of a motor vehicle without proof of insurance.

(7) If the person receiving a citation under this subsection shows to the court having jurisdiction of the case that required minimum insurance coverage was in effect at the time the citation was issued, the court may impose a fine not to exceed \$25.00. The court shall not in this case forward a record of the disposition of the case to the department, and the driver's license of such person shall not be suspended.

(8)(A) For purposes of this Code section, a valid insurance card or verification in electronic format on a mobile electronic device shall be sufficient proof of insurance only for any vehicle covered under

a fleet policy as defined in Code Section 40-2-137. The insurance card or verification in electronic format on a mobile electronic device for a fleet policy shall contain at least the name of the insurer, policy number, policy issue or effective date, policy expiration date, and the name of the insured and may, but shall not be required to, include the year, make, model, and vehicle identification number of the vehicle insured. If the operator of any vehicle covered under a fleet policy as defined in Code Section 40-2-137 presents a valid insurance card or verification in electronic format on a mobile electronic device for a fleet policy to any law enforcement officer or agency, and the officer or agency does not recognize the insurance card or verification in electronic format on a mobile electronic device as valid proof of insurance and impounds or tows such vehicle for lack of proof of insurance, the law enforcement agency or political subdivision shall be liable for and limited to the fees of the wrongful impoundment or towing of the vehicle, which in no way waives or diminishes any sovereign immunity of such governmental entity. If a person displays verification in electronic format on a mobile electronic device pursuant to this subparagraph, such person shall not be deemed as consenting to law enforcement to access other contents of such mobile electronic device.

(B) For any vehicle covered under a policy of motor vehicle liability insurance that is not a fleet policy as defined in Code Section 40-2-137, the insurer shall issue a policy information card which shall contain, or may make available in an electronic format on a mobile electronic device, at least the name of the insurer, policy number, policy issue or effective date, policy expiration date, name of the insured, and year, make, model, and vehicle identification number of each vehicle insured; the owner or operator of the motor vehicle shall keep such policy information card in the vehicle at all times during operation of the vehicle for purposes of Code Section 40-6-273.1, but any such policy information card or policy information in an electronic format on a mobile electronic device shall not be sufficient proof of insurance for any purposes of this Code section except as otherwise provided in this Code section. If a person displays policy information in an electronic format on a mobile electronic device pursuant to this subparagraph, such person shall not be deemed as consenting to law enforcement to access other contents of such mobile electronic device.

(b) An owner or any other person who knowingly operates or knowingly authorizes another to operate a motor vehicle without effective insurance on such vehicle or without an approved plan of self-insurance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or

imprisonment for not more than 12 months, or both. An operator of a motor vehicle shall not be guilty of a violation of this Code section if such operator maintains a policy of motor vehicle insurance which extends coverage to any vehicle the operator may drive. An owner or operator of a motor vehicle shall not be issued a citation by a law enforcement officer for a violation of this Code section if the sole basis for issuance of such a citation is that the law enforcement officer is unable to obtain insurance coverage information from the records of the department.

(c) Any person who knowingly makes a false statement or certification under Code Section 40-5-71 or this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$200.00 nor more than \$1,000.00 or imprisonment for not more than 12 months, or both.

(d) Except for vehicles insured under a fleet policy as defined in Code Section 40-2-137 or under a plan of self-insurance approved by the Commissioner of Insurance, insurance coverage information from records of the department shall be prima-facie evidence of the facts stated therein and shall be admissible as evidence in accordance with Code Section 24-9-924 for the purposes of this Code section. (Code 1981, § 40-6-10, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 1079, § 1; Ga. L. 2000, p. 429 §§ 5, 5A; Ga. L. 2001, p. 1228, § 2A; Ga. L. 2002, p. 1, § 1; Ga. L. 2003, p. 261, § 5; Ga. L. 2005, p. 334, § 18-1/HB 501; Ga. L. 2008, p. 209, § 1/HB 1235; Ga. L. 2010, p. 143, § 10/HB 1005; Ga. L. 2011, p. 99, § 59/HB 24; Ga. L. 2013, p. 607, § 1/HB 254.)

The 2013 amendment, effective May 6, 2013, added paragraphs (a)(1) and (a)(1.1); redesignated former paragraph (a)(1) as present paragraph (a)(1.2); in paragraph (a)(1.2), added the third and fourth sentences; inserted “or produced in electronic format” near the middle of paragraph (a)(3); in subparagraph (a)(8)(A), inserted “or verification in electronic format on a mobile electronic device” throughout and added the last sentence; in subparagraph (a)(8)(B), in the first sentence, inserted “, or may make available in an electronic format on a mobile electronic device,” near the middle, inserted “or policy information in an electronic format on a mobile electronic device” near the end, and added the second sentence.

Cross references. — Requirements of motor vehicle liability insurance policies and uninsured motorist coverage, § 33-7-11. Motor vehicle accident reparations, T. 33, C. 34. Proof of financial re-

sponsibility, T. 40, C. 9. Motor carrier bond or insurance, § 40-1-112.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, “data base” was substituted for “database” in paragraph (a)(3).

Editor’s notes. — Ga. L. 2000, p. 429, § 1, not codified by the General Assembly, provides: “(a) The General Assembly finds that a significant number of motor vehicle owners in this state fail to meet the requirements of existing law for minimum motor vehicle liability insurance. The General Assembly finds further that enforcement of such requirements is made difficult by existing methods and procedures for tracking insurance coverage and providing proof of insurance.

“(b) The General Assembly declares that the purpose of this Act is to improve enforcement of minimum motor vehicle liability insurance requirements by providing the Department of Public Safety

with updated information from insurers regarding those vehicles for which minimum motor vehicle liability insurance coverage is in effect, which information may be made accessible to law enforcement officers throughout the state, all without hampering the underwriting activities of any insurer or changing existing penalties for operating a motor vehicle without minimum liability insurance coverage.”

Code Section 40-5-71, referred to in subsection (c), was repealed by Ga. L. 2010, p. 143, § 8/HB 1005, effective May 20, 2010.

Ga. L. 2011, p. 99, § 101/HB 24, not

codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

For note on the 2001 amendment to O.C.G.A. § 40-6-10, see 18 Ga. St. U.L. Rev. 177 (2001). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 208 (2003).

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, p. 113, § 14 and decisions under former Code Section 33-34-12, which was renumbered as Code Section 40-6-10 by Ga. L. 1990, p. 2048, § 5, are included in the annotations for this Code section.

Section states separate offenses. — Paragraph (a)(1) and subsection (b) of O.C.G.A. § 40-6-10 do not simply describe alternative ways of committing a single crime, but rather describe two separate offenses. *Thompson v. State*, 243 Ga. App. 878, 534 S.E.2d 151 (2000).

Mandatory insurance requirement is constitutional. — Mandatory requirement for insurance coverage is not violative of due process, is not violative of First Amendment rights, and is not an unconstitutional exercise by the state of the state’s police power. *Andrew v. State*, 238 Ga. 433, 233 S.E.2d 209 (1977) (decided under Ga. L. 1974, p. 113, § 14).

Request for insurance card not required. — O.C.G.A. § 40-6-10 does not require that an officer “request” an insurance card in order to prosecute a driver for no proof of insurance; it is sufficient that no such proof can be found in the vehicle. *Moore v. State*, 234 Ga. App. 332, 506 S.E.2d 685 (1998).

Uninsured’s liability in negligence action. — When one fails to obtain coverage as required by the Georgia Motor Vehicle Reparations Act, one is subjected to the prescribed penalties and may be

liable in a negligence action as a tortfeasor since the protection of no fault coverage is not afforded. *Tamiami Trail Tours, Inc. v. Bess*, 150 Ga. App. 632, 258 S.E.2d 200 (1979) (decided under Ga. L. 1974, p. 113, § 14).

Willful injury. — Because any driver may be involved in an accident and such an accident may be determined to be the fault of such driver, the intentional act of driving without insurance coupled with negligent driving inflicts both a physical and economic injury, and the economic injury is a willful one. In *re Whipple*, 138 Bankr. 137 (Bankr. S.D. Ga. 1991) (decided under pre-1991 section).

Recorder’s court lacks jurisdiction. — Recorder’s court lacked jurisdiction to try a defendant for driving without insurance, and neither O.C.G.A. § 16-1-7 nor O.C.G.A. § 16-1-8 precluded later prosecution in superior court for operating a motor vehicle after having been declared a habitual violator and for driving under the influence. *Parker v. State*, 170 Ga. App. 333, 317 S.E.2d 209 (1984) (decided under former § 33-34-12).

Construction of “knowingly operating.” — Defendant’s inability to present proof of insurance does not establish that the defendant was knowingly operating a motor vehicle without effective insurance; failure to keep proof of insurance coverage and driving a vehicle without liability insurance are separate offenses. *Jones v. State*, 195 Ga. App. 569, 394 S.E.2d 387 (1990).

Knowledge that car was uninsured.

— For driving without insurance in violation of O.C.G.A. § 40-6-10(b), while although the state may have proved that the vehicle was uninsured and that the defendant was driving the vehicle without a license to drive, no evidence presented permitted the inference beyond a reasonable doubt that the defendant had knowledge that the car was uninsured. *English v. State*, 261 Ga. App. 157, 582 S.E.2d 136 (2003).

Defendant's knowledge of policy expiration inferrable.

— Conviction for a violation of former § 33-34-12 (see O.C.G.A. § 40-6-10) will not be precluded merely by a defendant's asserted lack of knowledge that defendant's insurance policy had expired; knowledge may be inferred from other facts and circumstances. *Quaile v. State*, 172 Ga. App. 421, 323 S.E.2d 281 (1984) (decided under former § 33-34-12); *Thompson v. State*, 243 Ga. App. 878, 534 S.E.2d 151 (2000).

Stop on basis of "unknown" insurance status was improper.

— Computer's return of "unknown" in response to a query regarding the insured status of a vehicle did not create a reasonable suspicion of criminal activity; thus, an officer's stop of the defendant's car solely on the basis of an "unknown" insurance status was improper, the later search of the car was tainted, and the trial court properly suppressed the search results. *State v. Dixon*, 280 Ga. App. 260, 633 S.E.2d 636 (2006).

Out-of-state vehicle. — When it was uncontroverted that the car defendant was driving was an Illinois automobile not required to be registered under Georgia law, the defendant was not subject to arrest under O.C.G.A. § 40-6-10(a)(1) for failure to have proof of insurance for the car. *Sanchez v. State*, 197 Ga. App. 470, 398 S.E.2d 740 (1990).

Lesser included offenses. — Operating motor vehicle without insurance is not lesser included offense of false swearing. *Bowen v. State*, 173 Ga. App. 361, 326 S.E.2d 525 (1985) (decided under former § 33-34-12).

Proof necessary to support conviction. — When the police officer requested proof of insurance during a lawful traffic

stop and the defendant did not provide such proof, there was sufficient evidence to establish that the defendant failed to comply with O.C.G.A. § 40-6-10; therefore, the trial court did not err in denying the defendant's motion for directed verdict. *Johnson v. State*, 251 Ga. App. 659, 555 S.E.2d 34 (2001).

Evidence supported guilty verdict.

— Evidence was sufficient to support the jury's guilty verdict on the charge defendant failed to maintain no-fault insurance on the vehicle involved in the collision. *Nash v. State*, 179 Ga. App. 702, 347 S.E.2d 651 (1986) (decided under former § 33-34-12).

Evidence was sufficient to support a conviction since: (1) after the defendant was stopped at a roadblock, an officer asked the defendant for the defendant's license and proof of insurance and the defendant responded by asking what the defendant had done; (2) the defendant was told that the defendant had done nothing, but that the papers still needed to be checked; (3) the defendant then stated that the defendant had not committed a crime and asked for the officer's badge number; (4) the officer gave this information to the defendant and then told the defendant that the defendant needed to produce the defendant's papers and that the defendant would otherwise be arrested; (5) the defendant then asked for the code section which permitted the officer to ask for the defendant's license; and (6) after this went on for several minutes, another officer came over and arrested the defendant. *Johnson v. State*, 234 Ga. App. 218, 507 S.E.2d 13 (1998); *Davidson v. State*, 237 Ga. App. 580, 516 S.E.2d 90 (1999).

Defendant's conviction for driving without insurance in violation of O.C.G.A. § 40-6-10(b) was based on sufficient evidence and, accordingly, the trial court's denial of defendant's motion for a judgment of acquittal pursuant to O.C.G.A. § 17-9-1 was properly denied since the jury determined, based mainly on circumstantial evidence, that the elements of the crime were satisfied; the record revealed that defendant was involved in a collision, slowed down briefly and then fled the scene, and then produced an insurance

card which did not appear to be authentic and was not validated by the insurance company. *Augustin v. State*, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Evidence that the defendant, following a high-speed motor vehicle chase with police, could not produce proof of insurance was sufficient to support the guilty verdict returned against the defendant for driving with no proof of insurance. *Arnold v. State*, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Defendant's motion for a directed verdict on the charge of driving with no proof of insurance was properly denied because the arresting officer confirmed several times that the defendant could not find the defendant's proof of insurance, which was sufficient evidence to sustain the conviction. *Broadnax-Woodland v. State*, 265 Ga. App. 669, 595 S.E.2d 350 (2004).

Evidence that a defendant received and drove a car following the defendant's father's death and drove the car without procuring insurance for the car was sufficient to prove a violation of O.C.G.A. § 40-6-10. *Lawson v. State*, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

Evidence was insufficient for conviction since there was no indication that any law enforcement officer ever asked the defendant about insurance. *Kersey v. State*, 243 Ga. App. 689, 534 S.E.2d 428 (2000).

When the state presented no evidence in response to the defense's evidence of an insurance card and, in fact, did not even object to the card's admission into evidence, the state failed to present sufficient evidence to support the charge of operating a vehicle without insurance pursuant to O.C.G.A. § 40-6-10(b), and the defendant's conviction on that charge had to be reversed. *Spence v. State*, 263 Ga. App. 25, 587 S.E.2d 183 (2003).

Defendant was entitled to reversal of the conviction for no proof of insurance because the responding officer testified that the officer did not find any proof of insurance inside the vehicle the defendant was driving, the officer did not state that the officer was unable to verify through the Department of Revenue records whether the vehicle was insured at the time of the accident, and the owner, who

was not the defendant, was responsible for providing the defendant with such proof. *Fouts v. State*, 322 Ga. App. 261, 744 S.E.2d 451 (2013).

Jury instructions. — With regard to the charge of driving a vehicle without liability insurance, a trial court erred in also instructing the jury that a driver has the duty to present proof of insurance upon the request of a law enforcement officer; these are separate offenses. *Griffith v. State*, 172 Ga. App. 255, 322 S.E.2d 921 (1984) (decided under former § 33-34-12).

When the defendant was charged with failing to maintain the defendant's lane in violation of O.C.G.A. § 40-6-48 and failing to use a turn signal in violation of O.C.G.A. § 40-6-123, the trial court properly instructed the jury as to the definition of the standard for strict liability offenses because the state was not required to prove mental fault or mens rea in those offenses; although O.C.G.A. § 40-6-10(b) required proof that the defendant knowingly operated the vehicle with no insurance, and O.C.G.A. § 40-6-270 required proof that the defendant knowingly failed to stop and comply with the statute's mandates, the trial court's charge on intent was found sufficient. *Augustin v. State*, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Charge of "no insurance." — Since the defendant was charged with only one crime, described as "no insurance" rather than "no proof of insurance," the defendant was charged with a violation of O.C.G.A. § 40-6-10(b), rather than a violation of O.C.G.A. § 40-6-10(a)(1) and, because O.C.G.A. § 40-6-10(b) requires proof that the defendant knowingly operated the vehicle with no insurance, the defendant was entitled to a jury instruction as to that element. *Thompson v. State*, 243 Ga. App. 878, 534 S.E.2d 151 (2000).

Proof of insurance for sentencing purposes. — O.C.G.A. § 40-6-10 mandates a lesser sentence for those who fail to have proof of insurance when they are stopped, but can later show the court that they actually were insured. *Bailey v. State*, 241 Ga. App. 497, 526 S.E.2d 865 (1999).

Sentence not unconstitutional. — Defendant's sentence of 12 months con-

finement to be served on probation following 60 days of confinement, \$1,500 in fines, 100 hours of community service, and a mental health evaluation for obstruction of a law enforcement officer, driving without insurance, and failing to register a vehicle was within the statutory limits set by O.C.G.A. §§ 16-10-24(b), 40-2-20(c), and 40-6-10(b), and did not shock the conscience. *Smith v. State*, 311 Ga. App. 184, 715 S.E.2d 434 (2011).

“Knowing” was not an element to be proven. — Word “knowing” was not essential to proving the crime of driving with no proof of insurance, and its inclusion in the accusation was mere surplusage. The accusation was sufficient to inform the defendant of the charge against the defendant, and to protect the defendant from another prosecution for the same offense. *Broadnax-Woodland v. State*, 265 Ga. App. 669, 595 S.E.2d 350 (2004).

Cited in *Martin v. State*, 145 Ga. App.

564, 244 S.E.2d 91 (1978); *Shmunex v. GMC*, 146 Ga. App. 486, 246 S.E.2d 486 (1978); *Peluso v. State*, 147 Ga. App. 266, 248 S.E.2d 546 (1978); *State Farm Fire & Cas. Co. v. Sweat*, 547 F. Supp. 233 (N.D. Ga. 1982); *Griffith v. State*, 172 Ga. App. 255, 322 S.E.2d 921 (1984); *Williams v. State*, 181 Ga. App. 49, 351 S.E.2d 207 (1986); *Schofill v. State*, 183 Ga. App. 251, 358 S.E.2d 651 (1987); *Farmer v. State*, 185 Ga. App. 512, 364 S.E.2d 639 (1988); *Watkins v. State*, 191 Ga. App. 87, 381 S.E.2d 45 (1989); *Lord v. State*, 194 Ga. App. 749, 392 S.E.2d 17 (1990); *Nunn v. State*, 224 Ga. App. 312, 480 S.E.2d 614 (1997); *Morrison v. State*, 225 Ga. App. 710, 484 S.E.2d 762 (1997); *State v. Simmons*, 255 Ga. App. 336, 565 S.E.2d 549 (2002); *Lopez v. State*, 286 Ga. App. 873, 650 S.E.2d 430 (2007); *Green v. State*, 287 Ga. App. 248, 651 S.E.2d 174 (2007); *Hughes v. State*, 293 Ga. App. 404, 667 S.E.2d 163 (2008); *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1974, p. 113, § 14 and former Code Section 33-34-12, which was renumbered as Code Section 40-6-10 by Ga. L. 1990, p. 2048, § 5, are included in the annotations for this Code section.

“Operator,” as used in former § 33-34-12 (see O.C.G.A. § 40-6-10), is applicable to anyone operating a motor vehicle, regardless of whether that person owns the motor vehicle or is related to the owner of the motor vehicle. 1989 Op. Att’y Gen. No. U89-3 (decided under former § 33-34-12).

Owners and non-owner operators must have proof of insurance. — Paragraph (a)(1) of former § 33-34-12 (see O.C.G.A. § 40-6-10) requires both the owner and a non-owner operator of a motor vehicle to maintain adequate proof or evidence of the requisite insurance on the vehicle, and that responsibility is no longer limited solely to the owner of the vehicle. 1988 Op. Att’y Gen. No. U88-13 (decided under former § 33-34-12).

Magistrate court’s limited jurisdiction. — Jurisdiction of magistrate’s court

of county does not embrace criminal prosecutions for violations of the insurance laws of this state, specifically proceedings brought under Ga. L. 1974, p. 113, § 14 (see O.C.G.A. § 40-6-10). 1975 Op. Att’y Gen. No. U75-46 (decided under Ga. L. 1974, p. 113, § 14).

Recorder’s court limited jurisdiction. — Recorder’s court does not have authority to handle cases arising under Ga. L. 1974, p. 113, § 14 (see O.C.G.A. § 40-6-10). 1980 Op. Att’y Gen. No. U80-4 (decided under Ga. L. 1974, p. 113, § 14).

Recorder’s court does not have the authority to try offenses under subsection (a) of former § 33-34-12 (see O.C.G.A. § 40-6-10). 1983 Op. Att’y Gen. No. U83-41 (decided under former § 33-34-12).

Law enforcement officers may stop and check drivers for proof of insurance, and may utilize the failure to produce such proof to trigger a requirement that such proof be provided within a reasonable time to avoid a citation for no insurance; but no citations may be issued for failure to produce proof of insurance on the spot. 1980 Op. Att’y Gen. No. U80-18 (decided under Ga. L. 1974, p. 113, § 14).

Effect of 1987 amendment on non-residents. — Although nonresidents may be charged with a violation of subsection (b) of former § 33-34-12 (see O.C.G.A. § 40-6-10) when operating an uninsured motor vehicle, nonresidents may not be charged with a violation of subsection (a)(1) of former § 33-34-12 (see O.C.G.A. § 40-6-10) as that subsection applies only to owners or operators of motor vehicles who are residents of the State of Georgia or who are otherwise required to register their vehicles in the State of Georgia. 1987 Op. Att'y Gen. No. 87-30 (decided under former § 33-34-12).

Violations by nonresidents. — Non-resident operating uninsured motor vehicle may be charged with violation of Ga. L. 1974, p. 113, § 14 (see O.C.G.A. § 40-6-10) regardless of whether the home state of the nonresident requires such a vehicle to be insured. 1985 Op.

Att'y Gen. No. U85-26 (decided under Ga. L. 1974, p. 113, § 14).

Driver of a borrowed automobile is required to show proof of insurance upon request. 1989 Op. Att'y Gen. No. U89-3 (decided under Ga. L. 1974, p. 113, § 14).

Effect of 1989 amendment on fingerprinting requirements. — After the 1989 amendment of Ga. L. 1974, p. 113, § 14 (see O.C.G.A. § 40-6-10) increased the potential penalty for this offense to 12 months imprisonment (the previous version authorized a maximum term of imprisonment of 30 days), and affects only the potential penalty and does not modify the elements of the offense itself, the offense shall not be designated as an offense requiring fingerprinting. 1989 Op. Att'y Gen. 89-52 (decided under Ga. L. 1974, p. 113, § 14).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 167 et seq.

40-6-10.1. Financial responsibility requirements of the Federal Motor Carrier Safety Administration.

No motor carrier subject to the financial responsibility requirements of the Federal Motor Carrier Safety Administration, or any successor agency, as contained in 49 C.F.R. Part 387, shall operate any motor vehicle upon the highways of this state until such motor carrier has obtained and has in effect the minimum levels of financial responsibility prescribed by such federal regulations. (Code 1981, § 40-6-10.1, enacted by Ga. L. 2011, p. 479, § 11/HB 112.)

40-6-11. Insurance requirements for operation of motorcycles.

(a) For the purposes of this Code section, "motorcycle" means any motor vehicle traveling on public streets or highways having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor and a moped.

(b) No owner of a motorcycle or any other person, other than a self-insurer as defined in Chapter 34 of Title 33, shall operate or authorize any other person to operate the motorcycle unless the owner has liability insurance on the motorcycle equivalent to that required as

evidence of security for bodily injury and property damage liability under Code Section 40-9-37. Any person who violates this subsection shall be guilty of a misdemeanor.

(c) The operator of a motorcycle shall keep proof or evidence of the minimum insurance coverage required by this Code section in his or her immediate possession or on the motorcycle at all times when such person is operating the motorcycle but only under the same circumstances and of the same type as prescribed for operators of other motor vehicles in Code Section 40-6-10. Any person who violates this subsection shall be subject to a fine not to exceed \$25.00; however, there shall be no suspension of the person's operator's license or motor vehicle license tag for a violation of this subsection.

(d)(1) Insurance coverage information from records of the department shall be prima-facie evidence of the facts stated therein and shall be admissible as evidence in accordance with Code Section 24-9-924 for the purposes of this Code section.

(2) Every law enforcement officer in this state shall request the operator of a motorcycle subject to the provisions of subsection (c) of this Code section to produce proof or evidence of minimum insurance coverage required by this Code section at any time the law enforcement officer stops the motorcycle or requests the presentation of the driver's license of such operator.

(e) An owner or operator of a motorcycle shall not be issued a citation by a law enforcement officer for a violation of this Code section if the sole basis for issuance of such a citation is that the law enforcement officer is unable to obtain insurance coverage information from the records of the department. (Code 1981, § 40-6-11, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2785, § 22; Ga. L. 2000, p. 429, §§ 6, 6A; Ga. L. 2003, p. 261, § 6; Ga. L. 2011, p. 99, § 60/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-9-924" for "Code Section 24-3-17" near the end of paragraph (d)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 2000, p. 429, § 1, not codified by the General Assembly, provides: "(a) The General Assembly finds that a significant number of motor vehicle owners in this state fail to meet the requirements of existing law for minimum motor vehicle liability insurance. The General Assembly finds further that enforcement of such requirements is made difficult by existing methods and procedures for tracking insurance coverage and providing proof of insurance.

"(b) The General Assembly declares that the purpose of this Act is to improve enforcement of minimum motor vehicle liability insurance requirements by providing the Department of Public Safety with updated information from insurers regarding those vehicles for which minimum motor vehicle liability insurance coverage is in effect, which information may be made accessible to law enforcement officers throughout the state, all without hampering the underwriting activities of any insurer or changing existing penalties for operating a motor vehicle without minimum liability insurance coverage."

Ga. L. 2011, p. 99, § 101/HB 24, not

codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 208 (2003).

JUDICIAL DECISIONS

Cited in Alexander Underwriters Gen. Agency, Inc. v. Lovett, 177 Ga. App. 262, 339 S.E.2d 368 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under former Code Section 33-34-14, are included in the annotations for this Code section.

Motorcycle liability insurance coverage for guest passengers. — Former

O.C.G.A. § 33-34-14 required that motorcycle liability insurance policies include coverage for guest passengers of at least the minimum coverage required under § 40-9-37. 1983 Op. Att’y Gen. No. U83-59 (decided under former § 33-34-14).

40-6-12. Subsequent violation; proof of financial responsibility.

(a) Any person convicted of a second or subsequent violation of Code Section 40-6-10 within a five-year period, as measured from date of arrest to date of arrest, shall be required to file with the Department of Driver Services and maintain for a period of three years from the date of conviction proof of financial responsibility, as such term is defined in paragraph (5) of Code Section 40-9-2, in addition to any other punishment.

(b) If the proof of financial responsibility filed in accordance with subsection (a) of this Code section is based upon a policy issued by an insurance company, such insurer may not cancel the policy until the Department of Driver Services is given at least 30 days’ prior written notice of such cancellation. (Code 1981, § 40-6-12, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-1; Ga. L. 2005, p. 334, § 18-2/HB 501.)

40-6-13. Courts having jurisdiction to try offenses.

Any court having jurisdiction to try and dispose of traffic offenses shall have jurisdiction to try and dispose of the misdemeanor offenses provided for in Code Sections 40-6-10 and 40-6-11. Such jurisdiction shall be concurrent with the jurisdiction of any other court within the county having jurisdiction to try and dispose of such offenses. (Code 1981, § 40-6-13, enacted by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Jurisdiction in state court of DeKalb County. — There was undisputed testimony that the misdemeanor crimes with which the defendant was charged and convicted occurred in DeKalb County, Georgia, and that the defendant was identified as the perpetrator of the

offenses; thus, the record affirmatively established that the state court of DeKalb County exercised both personal and subject matter jurisdiction over the defendant. *Freeman v. State*, 194 Ga. App. 905, 392 S.E.2d 330, cert. denied, 194 Ga. App. 911, 392 S.E.2d 330 (1990).

40-6-14. Limits on sound volume produced by radio, tape player, or other mechanical sound-making device or instrument from within the motor vehicle.

(a) It is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical sound-making device or instrument from within the motor vehicle so that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle.

(b) The provisions of this Code section shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(c) The provisions of this Code section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use sound-making devices. The provisions of this subsection shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from regulating the time and manner in which such business may be operated.

(d) The provisions of this Code section do not apply to the noise made by a horn or other warning device required or permitted by Code Section 40-8-70. The Department of Public Safety shall promulgate rules defining "plainly audible" and establish standards regarding the measurement of sound by law enforcement personnel.

(e) A violation of this Code section shall be a misdemeanor. (Code 1981, § 40-6-14, enacted by Ga. L. 1991, p. 417, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, the paragraph (1) designation of subsection (a) was deleted, and related stylistic changes made.

Law reviews. — For note on 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 143 (1992).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-6-14 is not unconstitutionally vague because the plain language of subsection (a) provides clear notice of what conduct is prohibited. *Davis v. State*, 272 Ga. 818, 537 S.E.2d 327 (2000).

Plaintiff had no standing to bring a declaratory judgment action challenging the constitutionality of O.C.G.A. § 40-6-14 as a violation of the due process clause claiming it is void for vagueness and is unenforceable due to the Department of Public Safety's failure to promulgate rules defining "plainly audible" or to establish standards regarding measurement of sound by law enforcement personnel as mandated by O.C.G.A. § 40-6-14(d). *Patterson v. State*, 242 Ga. App. 131, 528 S.E.2d 884 (2000).

Investigatory stop after officer hears loud music. — Trial court properly denied suppression of drug evidence obtained from a search of the defendant's person after a police officer conducted an investigatory stop of the defendant's vehicle and noted a strong odor of marijuana as the officer stopped the vehicle based on a reasonable suspicion that the defendant was violating O.C.G.A. § 40-6-14(a) by the loud music emanating from the defendant's vehicle while parked in a convenience store parking lot pursuant to

O.C.G.A. § 40-6-3(a)(2). *Jackson v. State*, 297 Ga. App. 615, 677 S.E.2d 782 (2009), cert. denied, No. S09C1461, 2009 Ga. LEXIS 409 (Ga. 2009).

In a case in which the defendant appealed a conviction for violating 18 U.S.C. § 922(g)(1), the defendant unsuccessfully argued that the district court erred in denying the defendant's motion to suppress the evidence seized from the defendant's automobile after being stopped by a police officer for violating O.C.G.A. § 40-6-14(a). The officer testified at the suppression hearing that the officer heard a loud thumping sound coming from the radio in defendant's automobile when the officer was located one block away from the defendant and that the officer heard the automobile before seeing it; a reasonable officer in the officer's position could have believed that the music was audible more than one-hundred feet away on the basis of those observations, and any mistake of fact by the officer in evaluating the distance from defendant's car was a reasonable one, and the officer did not violate the Fourth Amendment by stopping defendant for violation of the noise statute. *United States v. Smalls*, No. 11-12621, 2012 U.S. App. LEXIS 1203 (11th Cir. Jan. 19, 2012) (Unpublished).

Cited in *State v. Bute*, 250 Ga. App. 479, 552 S.E.2d 465 (2001).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and

file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

40-6-15. Knowingly driving motor vehicle on suspended, canceled, or revoked registration a misdemeanor; punishment.

(a) Any person who knowingly drives a motor vehicle on any public road or highway of this state at a time when the vehicle registration of such vehicle is suspended, canceled, or revoked shall be guilty of a misdemeanor.

(b) Upon a first conviction thereof or a plea of *nolo contendere*, such person shall be punished by imprisonment for not more than 12 months

and there may be imposed in addition thereto a fine of not less than \$500.00 nor more than \$1,000.00, at the discretion of the court.

(c) For a second or subsequent conviction within five years as measured from the dates of previous arrests for which convictions were obtained or pleas of *nolo contendere* were accepted to the date of the current arrest for which a conviction is obtained or a plea of *nolo contendere* accepted, such person shall be guilty of a high and aggravated misdemeanor and shall be punished by imprisonment for not less than ten days nor more than 12 months and there may be imposed in addition thereto a fine of not less than \$1,000.00 nor more than \$2,500.00.

(d) The department, upon receiving a record of the conviction of any person under this Code section upon a charge of driving a vehicle while the registration of such vehicle was suspended or revoked, shall extend the period of suspension or revocation for six months. The department may reinstate the suspended or revoked vehicle registration following the expiration of the original suspension or revocation period, the additional six-month suspension imposed pursuant to this subsection, and upon payment of a restoration fee of \$210.00, or \$200.00 when such reinstatement is processed by mail.

(e) For all purposes under this Code section, a plea of *nolo contendere* shall be considered as a conviction.

(f) Notwithstanding the limits set forth in Article 14 of this chapter and in any municipal charter, any municipal court of any municipality in this state shall be authorized to impose the punishment provided for in this Code section upon a conviction of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section. (Code 1981, § 40-6-15, enacted by Ga. L. 2002, p. 1024, § 6.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, “six-month suspension” was substituted for “six month suspension” in the last sentence in subsection (d).

Editor’s notes. — Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: “This Act shall become effective November 1, 2002; provided, however,

that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose.”

JUDICIAL DECISIONS

Evidence insufficient. — Evidence that a defendant received and drove a car following the defendant’s father’s death

was insufficient to prove a violation of O.C.G.A. § 40-6-15 because there was no evidence from which the jury could infer

that the defendant knew that the car was not registered. *Lawson v. State*, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

40-6-16. Spencer Pass Law; procedure for passing stationary authorized emergency vehicles, stationary towing or recovery vehicles, or stationary highway maintenance vehicles.

(a) This Code section shall be known and may be cited as the "Spencer Pass Law."

(b) The operator of a motor vehicle approaching a stationary authorized emergency vehicle that is displaying flashing yellow, amber, white, red, or blue lights shall approach the authorized emergency vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

(c) The operator of a motor vehicle approaching a stationary towing or recovery vehicle or a stationary highway maintenance vehicle that is displaying flashing yellow, amber, or red lights shall approach the vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the towing, recovery, or highway maintenance vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

(d) Violation of subsection (b) or (c) of this Code section shall be punished by a fine of not more than \$500.00. (Code 1981, § 40-6-16, enacted by Ga. L. 2003, p. 427, § 1; Ga. L. 2006, p. 231, § 2/SB 64; Ga. L. 2011, p. 593, § 1/HB 156.)

Cross references. — Payment of indemnification or disability of emergency personnel or prison guards, § 45-9-85.

Law reviews. — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 213 (2003).

JUDICIAL DECISIONS

Violation of statute warranted investigative stop. — Because the defendant's apparent violation of O.C.G.A. § 40-6-16(a) (now subsection (b)) gave the investigating officer a reasonable and articulable suspicion to stop the defendant and inquire further, the trial court erred in granting the defendant's motion to suppress a refusal to take a breath test in connection with DUI charges; moreover, the trial court erroneously concluded that the defendant could have had an innocent explanation for a last-minute swerve to avoid hitting the officer's patrol car as the issue went to the question of guilt or innocence and was not the dispositive question on a motion to suppress. *State v. Rheinlander*, 286 Ga. App. 625, 649 S.E.2d 828 (2007).

Evidence sufficient for conviction. — Defendant's motion for directed verdict of acquittal on a violation of Georgia's "move-over" statute, O.C.G.A.

§ 40-6-16(a) (now subsection (b)), was properly denied because a reasonable jury could find that, although a patrol car was moving at the time the defendant nearly struck the car, the car had been stationary with lights flashing, and the defendant had failed to slow down or move over. *Van Auken v. State*, 304 Ga. App. 802, 697 S.E.2d 895 (2010).

Evidence that the defendant passed the officer in a lane adjacent to the officer while the officer conducted a traffic stop and had the officer's blue emergency lights activated, and that the defendant had room to move out of the adjacent lane and safely into a farther lane was sufficient to support the defendant's conviction for violation of the Spencer Pass Law, O.C.G.A. § 40-6-16. *Pierce v. State*, 322 Ga. App. 145, 743 S.E.2d 438 (2013).

Cited in *Stevenson v. City of Doraville*, 294 Ga. 220, 751 S.E.2d 845 (2013).

40-6-17. Prohibited use of traffic-control device preemption emitter; penalty.

(a) As used in this Code section, the term "traffic-control device preemption emitter" means a mobile infrared transmitter or any other similar device which transmits an infrared beam, radio wave, or other signal used for the purpose of changing, altering, disabling, or disrupting the normal signal sequence of a traffic-control device.

(b) It shall be unlawful for any person other than law enforcement, fire department, or emergency personnel to use, possess with the ability to use, sell, or purchase a traffic-control device preemption emitter.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-6-17, enacted by Ga. L. 2004, p. 1084, § 1.)

ARTICLE 2

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

Cross references. — Routes and signage for the Georgia Wine Highway, § 3-6-21.4. Promulgation by Department of Transportation of uniform regulations

governing erection and maintenance of signs, signals, markings, and other traffic-control devices, § 32-6-50.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 237 et seq.

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 ALR 459; 23 ALR 418.

Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or

malfunctioning of stop sign or other traffic signal, 74 ALR2d 242.

Custom or practice of drivers of motor vehicles as affecting question of negligence, 77 ALR2d 1327.

Governmental liability for failure to post highway deer crossing warning signs, 59 ALR4th 1217.

40-6-20. Obedience to traffic-control devices required; presumptions; enforcement by traffic-control signal monitoring devices.

(a) The driver of any vehicle shall obey the instructions of an official traffic-control device applicable thereto, placed in accordance with this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter. A violation of this subsection shall be a misdemeanor, except as otherwise provided by subsection (f) of this Code section.

(b) No provisions of this chapter which require official traffic-control devices shall be enforced against an alleged violator if at the time and place of the alleged violation an official device was not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular Code section does not state that official traffic-control devices are required, such Code section shall be effective even though no devices are erected or in place.

(c) Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(d) Any official traffic-control device placed pursuant to this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter, unless the contrary shall be established by competent evidence.

(e) The disregard or disobedience of the instructions of any official traffic-control device or signal placed in accordance with the provisions of this chapter by the driver of a vehicle shall be deemed prima-facie

evidence of a violation of law, without requiring proof of who and by what authority such sign or device has been erected.

(f)(1) As used in this subsection, the term:

(A) "Owner" means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

(B) "Recorded images" means images recorded by a traffic-control signal monitoring device:

(i) On:

(I) Two or more photographs;

(II) Two or more microphotographs;

(III) Two or more electronic images; or

(IV) Videotape; and

(ii) Showing a traffic-control signal displaying a CIRCULAR RED or RED ARROW signal along with the rear of a motor vehicle apparently operated in disregard or disobedience of such signal and, on at least one image or portion of tape, clearly revealing the number or other identifying designation of the license plate displayed on the motor vehicle.

(C) "Traffic-control signal monitoring device" means a device with one or more motor vehicle sensors working in conjunction with a traffic-control signal to produce recorded images of motor vehicles being operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal.

(2) Subsection (a) of this Code section may be enforced as provided in this subsection pursuant to the use of traffic-control signal monitoring devices in accordance with Article 3 of Chapter 14 of this title.

(3) For the purpose of enforcement pursuant to this subsection:

(A) The driver of a motor vehicle shall be liable for a civil monetary penalty of not more than \$70.00 if such vehicle is found, as evidenced by recorded images produced by a traffic-control signal monitoring device, to have been operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section and such disregard or disobedience was not otherwise authorized by law;

(B) The law enforcement agency authorized to enforce the provisions of this Code section shall send by regular mail addressed to

the owner of the motor vehicle postmarked not later than ten days after the date of the alleged violation:

(i) A citation for the alleged violation, which shall include the date and time of the violation, the location of the intersection, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid;

(ii) A copy of the recorded image;

(iii) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce this Code section and stating that, based upon inspection of recorded images, the owner's motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law;

(iv) A statement of the inference provided by subparagraph (D) of this paragraph and of the means specified therein by which such inference may be rebutted;

(v) Information advising the owner of the motor vehicle of the manner and time in which liability as alleged in the citation may be contested in court; and

(vi) Warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall waive any right to contest liability and result in a civil monetary penalty;

provided, however, that only warning notices and not citations for violations shall be sent during the 30 day period commencing with the installation of a traffic-control signal monitoring device at such location;

(C) Proof that a motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section shall be evidenced by recorded images produced by a traffic-control signal monitoring device authorized pursuant to Article 3 of Chapter 14 of this title. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of recorded images, a motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(D) Liability under this subsection shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this subsection was operated in violation of subsection (a) of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(i) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation;

(ii) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation; or

(iii) Submits to the court a sworn notarized statement identifying the name of the operator of the vehicle at the time of the alleged violation.

(4) A violation for which a civil penalty is imposed pursuant to this subsection shall not be considered a moving traffic violation, for the purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil penalty pursuant to this subsection shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(5) If a person summoned by regular mail fails to appear on the date of return set out in the citation and has not paid the penalty for the violation or filed a police report or notarized statement pursuant to subparagraph (D) of paragraph (3) of this subsection, the person shall then be summoned a second time by certified mail with a return receipt requested. The second summons shall include all information required in subparagraph (B) of paragraph (3) of this subsection for the initial summons and shall include a new date of return. If a person summoned by certified mail again fails to appear on the date of return set out in the second citation and has failed to pay the penalty or file an appropriate document for rebuttal, the person summoned shall have waived the right to contest the violation and shall be liable for a civil monetary penalty of not more than \$70.00.

(6) Any court having jurisdiction over violations of subsection (a) of this Code section or any ordinance adopting the provisions of said subsection pursuant to Code Section 40-6-372 shall have jurisdiction

over cases arising under this subsection and shall be authorized to impose the civil monetary penalty provided by this subsection. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this subsection; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(7) Recorded images made for purposes of this subsection shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(8) A governing authority shall not impose a civil penalty under this subsection on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a peace officer for the same violation that is recorded by a traffic-control signal monitoring device. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 32, 34; Code 1933, § 68A-201, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2001, p. 770, § 2; Ga. L. 2003, p. 597, § 2; Ga. L. 2008, p. 1184, §§ 1, 1.1, 2/HB 77.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the “(8)” designation was added to the last paragraph in subsection (f).

Law reviews. — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Jurisdiction of campus police. — University police officer had authority under O.C.G.A. § 40-13-30 to issue citations for an accident that occurred at an intersection that bordered the campus, and the trial court, therefore, properly denied defendant’s motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 relating to the charge of failing to obey a traffic control device in violation of O.C.G.A. § 40-6-20; the broad language of O.C.G.A. § 40-13-30 gave any officer of Georgia that had authority to arrest for a misdemeanor the authority to prefer charges and bring offenders to trial. *Hawkins v. State*, 281 Ga. App. 852, 637 S.E.2d 422 (2006).

Requirements of accusation and ability to withstand demurrer. — Trial court erred in sustaining defendant’s demurrer regarding the charges of failing to yield the right of way while turning left and failing to obey a traffic-control device

as an accusation that charges an accused with having committed certain acts in violation of a specified penal statute without a demurrer, and the indictment cited both O.C.G.A. §§ 40-6-20 and 40-6-71. Further, although the accusation failed to put the defendant on notice of what instruction of a traffic-control device the state alleged the defendant failed to obey, the defendant could not admit that the defendant failed to yield the right of way to a vehicle when the defendant was intending to turn left within the specified intersection, which was regulated by traffic lights, without admitting to the offense of failure to obey a traffic-control device. *State v. Shabazz*, 291 Ga. App. 751, 662 S.E.2d 828 (2008).

Charge authorized under Code section. — O.C.G.A. § 40-6-20 requires drivers to obey the instructions of traffic control devices and could be the basis for a charge of vehicular homicide or failure to

yield the right of way. *State v. Nix*, 220 Ga. App. 651, 469 S.E.2d 497 (1996).

Trial court did not err in failing to give requested jury instructions by a driver whose vehicle was involved in a collision with a city fire rescue van as the trial court's instructions under O.C.G.A. §§ 40-6-6 and 40-6-20(a) properly allowed the jury to determine whether the rescue van was an authorized emergency vehicle that complied with O.C.G.A. § 40-6-6, and the instructions also adequately informed the jury that the city had the burden of proof on the issue. *Wynn v. City of Warner Robins*, 279 Ga. App. 42, 630 S.E.2d 574 (2006).

Charge on intent properly required. — When a case arose from an intersection collision between a car driven by the defendant and another car, a red Mustang, and when the defense's contentions at trial were that the defendant thought the light was green, that the defendant had no intention of running a red light or of causing the victim's death, and that if the defendant did run the red light, it was the result of legal mistake or accident, the trial court did not err by charging the jury on the intent required to commit the offenses charged; the state was required to prove the intent to do the act which resulted in the violation of the law and not the intent to commit the crime itself. *Hoffer v. State*, 192 Ga. App. 378, 384 S.E.2d 902, cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Charge on advisory sign not required. — In a wrongful death action, the trial court did not err in refusing to charge O.C.G.A. § 40-6-20 since the yellow sign with the legend "exit 30 m.p.h." located near the area of the fatal impact was an advisory sign. *Norman v. Williams*, 220 Ga. App. 367, 469 S.E.2d 366 (1996).

Presumption of proper placement of no parking sign. — Whenever a no parking sign is placed in a position approximately conforming to the requirements of this chapter, the sign shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence. *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

Merger into vehicular homicide. — Defendant's reckless driving, running a

red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Stoplight showing green lights in both directions. — When the case arose from an intersection collision between a car which defendant drove and another car, because the trial court correctly and repeatedly charged that the defendant could be convicted only if the state proved beyond a reasonable doubt that the stop light facing the defendant was red, any defense based upon the light being green when the defendant went through the light was not an accident defense; logically, one cannot be convicted of running a red light if the light was, in fact, green; accordingly, the defendant's contention that a malfunction of the light showing green lights in both directions did not give rise to the defense of accident. *Hoffer v. State*, 192 Ga. App. 378, 384 S.E.2d 902, cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Conditions for speed limit reduction. — Whether the speed limit has been reduced depends upon whether action has been taken by a governing authority and proper notice posted on the highway. *Harper v. Brown*, 122 Ga. App. 316, 176 S.E.2d 621 (1970).

Transportation Department presumed responsible for highway sign. — Under subsection (c) of Ga. L. 1953, Nov.-Dec. Sess. p. 556 (see O.C.G.A. § 40-6-20), a sign or marking on a state highway is presumed to have been put there by the authority of the State Highway Department (now Department of Transportation). *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Violation of self-explanatory traffic-control device. — All traffic-control devices placed on the highway are presumed to be placed there by

the authority of the State Highway Board (now State Transportation Board) of this state. Those which are self-explanatory are such that a violation thereof is a penal offense. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which it can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Driver obeying sign may assume maximum speed limit not exceeded. — Driver must be entitled to assume that the driver is not exceeding the maximum speed limit when the driver drives in obedience to the sign, although the sign indicates a higher limit than that provided by a valid ordinance. *Palmer v. Stevens*, 115 Ga. App. 398, 154 S.E.2d 803 (1967).

Prima facie evidence of legal violation. — Proof that a speed limit sign exists at a given spot and that a driver disobeyed the sign constitutes prima facie evidence of a violation of law, without showing that the sign was official or by whom and by what authority the sign was erected. *Palmer v. Stevens*, 115 Ga. App. 398, 154 S.E.2d 803 (1967).

Burden of showing sign not placed by governmental authority. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see O.C.G.A. § 40-6-20) must mean that the movant may offer evidence that a traffic-control sign or device existed at the given spot; the burden is then upon the person objecting to the evidence to offer evidence showing that the signal was not placed there by any proper governmental authority. The evidence might be general, as showing that the signal in question is not one used by the authority having jurisdiction at that place; it might be a showing that it was placed there by an unauthorized authority, or it might be any other type of evidence sufficient to overcome the prima facie showing that the device existed and should therefore have been obeyed. *Fields*

v. Jackson, 102 Ga. App. 117, 115 S.E.2d 877 (1960).

Burden is upon the person objecting to evidence that a traffic-control sign or device existed at a given spot to offer evidence showing that the signal was not placed there by any proper governmental authority. The evidence might be general, as showing that the signal in question is not one used by the authority having jurisdiction at that place; it might be a showing that it was placed there by an unauthorized authority; or it might be any other type of evidence sufficient to overcome the prima facie showing that the device existed and should therefore have been obeyed. *Munday v. Brissette*, 113 Ga. App. 147, 148 S.E.2d 55, rev'd on other grounds, 222 Ga. 162, 149 S.E.2d 110 (1966).

Sufficient evidence to show violation. — Police officer's testimony that the defendant went through a red light was sufficient evidence to convict the defendant driver of violating O.C.G.A. § 40-6-20. *Lanwehr v. State*, 265 Ga. App. 359, 593 S.E.2d 897 (2004).

There was sufficient evidence to support the defendant's conviction for vehicular homicide by driving under the influence of alcohol. The testimony of the arresting officer that the defendant appeared intoxicated, a videotape of the defendant interacting with the officer at the scene, the testimony of an expert that indicated that the defendant took no evasive actions and struck the pedestrian in a well-lighted area, and the testimony of witnesses that the defendant ran a red light supported the defendant's conviction. *Brown v. State*, 291 Ga. App. 383, 662 S.E.2d 206 (2008).

Because a police officer observed the defendant make a turn even though the arrows indicating that turn remained red, the valid traffic stop was not impermissibly prolonged pending the arrival of a second officer due to the first officer's incapacity to smell; accordingly, the evidence was sufficient to sustain the defendant's conviction for driving under the influence and failing to obey a traffic control device under O.C.G.A. §§ 40-6-20 and 40-6-391(a)(1), (a)(5). *Peterson v. State*, 294 Ga. App. 128, 668 S.E.2d 544 (2008).

Evidence was sufficient to support the

defendant's conviction for disobeying a traffic control device under O.C.G.A. § 40-6-20 because, although the defendant never reached the intersection at issue because the defendant rear-ended the last of three cars sitting at the intersection, a reasonable reading of the statute required that a driver facing a red traffic light stop behind the stop line or cross walk and also behind those vehicles stopped in observance of the traffic light. *Brogdon v. State*, 299 Ga. App. 547, 683 S.E.2d 99 (2009), *aff'd*, 287 Ga. 528, 697 S.E.2d 211 (2010).

Jury cannot decide speed limit of unmarked area. — Issue should not be left after the event for a jury to decide, since official action has not been taken, whether it considers an unmarked area to have a certain speed limit. *Harper v. Brown*, 122 Ga. App. 316, 176 S.E.2d 621 (1970).

Giving charge regarding the lack of an absolute duty to have one's vehicle under control was error since it was undisputed that the defendant ran a red light; the charge given applies to intersections where right-of-way rules apply. *Fouts v. Builders Transp., Inc.*, 222 Ga. App. 568, 474 S.E.2d 746 (1996).

Fine for running red light. — Defendant's fine of \$252 for running a red light was not excessive under state law since a misdemeanor is generally punishable by a fine not to exceed \$1,000 or a sentence not to exceed 12 months. The fact that the trial court might generally impose lesser fines in other cases would not without more render a larger fine impermissible in a particular case. *Riddle v. State*, 202 Ga. App. 194, 413 S.E.2d 494 (1991).

City did not violate a driver's substantive due process rights by adding court surcharges under O.C.G.A. § 15-21-73 to a penalty for running a red light under O.C.G.A. § 40-6-20 before stopping the practice pursuant to an opinion by the state attorney general; the city's actions of collecting surcharges that the city thought were permissible under state law and remitting the monies to other governmental authorities appeared to have been taken in good faith and did not shock the conscience. *City of Duluth v. Morgan*, 287 Ga. App. 322, 651 S.E.2d 475 (2007).

Cited in *Liberty Mut. Ins. Co. v. Bray*, 136 Ga. App. 587, 222 S.E.2d 70 (1975); *Andrews v. Buckner*, 143 Ga. App. 862, 240 S.E.2d 266 (1977); *Georgia S. & Fla. Ry. v. Odom*, 152 Ga. App. 664, 263 S.E.2d 469 (1979); *State v. Williams*, 156 Ga. App. 813, 275 S.E.2d 133 (1980); *Washington v. Washington*, 181 Ga. App. 848, 354 S.E.2d 25 (1987); *Duke Trucking Co. v. Giles*, 185 Ga. App. 833, 366 S.E.2d 216 (1988); *Ward v. State*, 188 Ga. App. 372, 373 S.E.2d 65 (1988); *Lyons v. State*, 208 Ga. App. 632, 431 S.E.2d 432 (1993); *DOT v. Jackson*, 229 Ga. App. 321, 494 S.E.2d 20 (1997); *Howard v. State*, 233 Ga. App. 861, 505 S.E.2d 270 (1998); *Driver v. State*, 240 Ga. App. 513, 523 S.E.2d 919 (1999); *United States v. Benitez-Macedo*, 129 Fed. Appx. 506 (11th Cir. 2005); *Jaheni v. State*, 285 Ga. App. 266, 645 S.E.2d 735 (2007); *Horne v. State*, 286 Ga. App. 712, 649 S.E.2d 889 (2007); *Green v. State*, 287 Ga. App. 248, 651 S.E.2d 174 (2007); *Dunagan v. State*, 283 Ga. 501, 661 S.E.2d 525 (2008); *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Official signs afford same protection as other traffic devices. — Official traffic control signs, such as "Men Working," "Watch for Mowers," and "Survey Party," afford the same legal protection that is afforded by other official traffic control devices. 1970 Op. Att'y Gen. No. 70-55.

Construction with other law. — Additional monetary penalties provided in O.C.G.A. § 15-21-73 may not be added to the civil monetary penalties imposed pursuant to O.C.G.A. § 40-6-20. 2005 Op. Att'y Gen. No. U2005-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 238, 244, 303, 312 et seq., 327 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic, § 944.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 28 et seq., 33, 51, 53, 54, 56 et seq., 74. 60A C.J.S., Motor Vehicles, § 494, 564, 565, 566, 838 et seq. 61 C.J.S., Motor Vehicles, § 1254. 61A C.J.S., Motor Vehicles, § 1642.

ALR. — Liability for automobile accident, other than direct collision with pedestrian, as affected by reliance upon or disregard of stop-and-go signal, 2 ALR3d 12.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 ALR3d 155.

Liability for automobile accident at intersection as affected by reliance upon or disregard of "yield" sign or signal, 2 ALR3d 275.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 ALR3d 180.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 ALR3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 ALR3d 557.

40-6-21. Meaning of traffic signals.

(a) The following meanings shall be given to highway traffic signal indications, except those on pedestrian signals:

(1) Green indications shall have the following meanings:

(A) Traffic, except pedestrians, facing a CIRCULAR GREEN signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Vehicular traffic turning shall yield the right of way to approaching vehicles. Vehicular traffic must stop and remain stopped to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subparagraph, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel;

(B) Traffic, except pedestrians, facing a GREEN ARROW signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall stop and remain stopped to allow a pedestrian lawfully within an adjacent crosswalk to cross the roadway within a crosswalk

when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subparagraph, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel. Vehicular traffic shall yield the right of way to other traffic lawfully using the intersection; and

(C) Unless otherwise directed by a pedestrian signal, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk;

(2) Yellow indications shall have the following meanings:

(A) Traffic, except pedestrians, facing a steady CIRCULAR YELLOW or YELLOW ARROW signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection;

(B) Pedestrians facing a steady CIRCULAR YELLOW or YELLOW ARROW signal, unless otherwise directed by a pedestrian signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway; and

(C) Traffic, except pedestrians, facing a flashing YELLOW ARROW signal may proceed in the direction of the arrow. Vehicular traffic turning shall yield the right of way to approaching vehicles. Vehicular traffic shall stop and remain stopped to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian is lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited, when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subparagraph, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel; and

(3) Red indications shall have the following meanings:

(A) Traffic, except pedestrians, facing a steady CIRCULAR RED signal alone shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection, and shall remain standing until an indication to proceed is shown, except as provided in subparagraphs (B), (C), and (D) of this paragraph;

(B) Vehicular traffic facing a steady CIRCULAR RED signal may cautiously enter the intersection to make a right turn after stopping as provided in subparagraph (A) of this paragraph. Such vehicular traffic shall stop and remain stopped to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subparagraph, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel. Vehicular traffic shall yield the right of way to other traffic lawfully using the intersection;

(C) Traffic, except pedestrians, facing a steady CIRCULAR RED signal, after stopping as provided in subparagraph (A) of this paragraph, may make a right turn but shall stop and remain stopped for pedestrians and yield the right of way to other traffic proceeding as directed by the signal at such intersection. Such vehicular traffic shall not make a right turn against a steady CIRCULAR RED signal at any intersection where a sign is erected prohibiting such right turn;

(D) Traffic, except pedestrians, facing a steady CIRCULAR RED signal, after stopping as provided in subparagraph (A) of this paragraph, may make a left turn from the left-hand lane of a one-way street onto a one-way street on which the traffic moves toward the driver's left but shall stop and remain stopped for pedestrians and yield the right of way to other traffic proceeding as directed by the signal at such intersection. Such vehicular traffic shall not make a left turn against a steady CIRCULAR RED signal at any intersection where a sign is erected prohibiting such left turn;

(E) Unless otherwise directed by a pedestrian signal, pedestrians facing a steady CIRCULAR RED signal alone shall not enter the roadway;

(F) Traffic, except pedestrians, facing a steady RED ARROW signal may not enter the intersection to make the movement indicated by such arrow and, unless entering the intersection to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection, and shall remain standing until an indication to make the movement indicated by such arrow is shown;

(G) Unless otherwise directed by a pedestrian signal, pedestrians facing a steady RED ARROW signal shall not enter the roadway; and

(H) Traffic, except pedestrians, facing a flashing RED ARROW signal, after stopping as provided in subparagraph (A) of this paragraph, may make a right turn but shall stop and remain stopped for pedestrians and yield the right of way to other traffic proceeding as directed by the signal at such intersection.

(b) In the event an official traffic-control device signal is erected and maintained at a place other than an intersection, the provisions of this Code section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but, in the absence of any such sign or marking, the stop shall be made at the signal. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 35; Ga. L. 1973, p. 474, § 1; Code 1933, § 68A-202, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 496, § 1; Ga. L. 1977, p. 278, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 229, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 2014, p. 851, § 6/HB 774.)

The 2014 amendment, effective July 1, 2014, substituted "Yellow" for "Steady yellow" at the beginning of paragraph (a)(2); deleted "and" at the end of subparagraph (a)(2)(A); added subparagraph (a)(2)(C); substituted "Red" for "Steady red" at the beginning of paragraph (a)(3);

in subparagraphs (a)(3)(F) and (a)(3)(G), deleted "indication" following "RED ARROW signal"; deleted "and" at the end of subparagraph (a)(3)(F); added "; and" at the end of subparagraph (a)(3)(G); and added subparagraph (a)(3)(H).

JUDICIAL DECISIONS

Offenses not chargeable under Code section. — Intent of O.C.G.A. § 40-6-21 is only to define the meaning to be given to traffic control signals and the statute could not be the basis for a charge of vehicular homicide or failure to yield the right of way. *State v. Nix*, 220 Ga. App. 651, 469 S.E.2d 497 (1996).

Trial court did not err by charging that intent was required. — When a case arose from an intersection collision between a car driven by the defendant and another car and since the defense's contentions at trial were that the defendant thought the light was green, that the defendant had no intention of running a red light or of causing the victim's death, and that if the defendant did run the red light, it was the result of legal mistake or accident, the trial court did not err by charging the jury on the intent required to commit the offenses charged; the state was required to prove the intent to do the act which resulted in the violation of the

law and not the intent to commit the crime itself. *Hoffer v. State*, 192 Ga. App. 378, 384 S.E.2d 902, cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Strict liability offense. — After the defendant was charged with disobeying a traffic control device, the court properly rejected an instruction under O.C.G.A. § 16-2-2, that a person shall not be found guilty of any crime committed by misfortune or accident because the charge was a strict liability offense. *Arnold v. State*, 228 Ga. App. 470, 491 S.E.2d 819 (1997).

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with to the extent of imposing penal sanctions for disobedience thereof. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Jury instruction as to procedure under green light. — Trial court erred in instructing the jury as to O.C.G.A. § 40-6-21 and omitting language providing that vehicles which enter an intersection by virtue of a “circular green” signal must nonetheless yield to vehicles lawfully within the intersection. *Steele v. Blickstein*, 170 Ga. App. 177, 316 S.E.2d 767 (1984).

Pedestrian’s duty to exercise ordinary care. — O.C.G.A. §§ 40-6-21 and 40-6-22 mandate that the driver of a vehicle shall yield the right of way to a pedestrian lawfully crossing an intersection, however, those statutes do not abrogate a pedestrian’s duties to exercise ordinary care for the pedestrian’s own safety and avoid the consequences of any negligence on the part of others. *Gaffron v. Metropolitan Atlanta Rapid Transit Auth.*, 229 Ga. App. 426, 494 S.E.2d 54 (1997).

When the plaintiff represented that the plaintiff safely entered a crosswalk, although admitting that the last time plaintiff saw the defendant’s vehicle was when the vehicle was slowing down, and that the plaintiff entered the crosswalk when faced solely with a green arrow, and when the defendant’s testimony was that the plaintiff “jetted out” into the path of the defendant’s vehicle as the defendant made a right turn on red, the jury’s verdict in favor of the defendant was authorized by the evidence and the trial court did not err in denying the plaintiff’s motion for new trial. *Sampson v. Jones*, 236 Ga. App. 57, 510 S.E.2d 902 (1999).

Stoplight showing green lights in both directions. — When the case arose from an intersection collision between a car which defendant drove and another car, because the trial court correctly and repeatedly charged that the defendant could be convicted only if the state proved beyond a reasonable doubt that the stop light facing the defendant was red, any defense based upon the light being green when the defendant went through the light, was not an accident defense; logically, one cannot be convicted of running a red light if the light was, in fact, green; accordingly, defendant’s contention that a malfunction of the light showing green lights in both directions did not give rise to the defense of accident. *Hoffer v. State*, 192 Ga. App. 378, 384 S.E.2d 902, cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Jury instructions upheld. — Instruction on subparagraph (a)(1)(A) (meaning of traffic signals) of O.C.G.A. § 40-6-21, rather than O.C.G.A. § 40-6-71 (turning left), held proper. *Corley v. Harris*, 171 Ga. App. 688, 320 S.E.2d 833 (1984); *Bailey v. Bartee*, 205 Ga. App. 463, 422 S.E.2d 319 (1992).

Cited in *Washington v. Washington*, 181 Ga. App. 848, 354 S.E.2d 25 (1987); *United States v. Benitez-Macedo*, 129 Fed. Appx. 506 (11th Cir. 2005); *State v. Shabazz*, 291 Ga. App. 751, 662 S.E.2d 828 (2008); *Brogdon v. State*, 299 Ga. App. 547, 683 S.E.2d 99 (2009), *aff’d*, 287 Ga. 528, 697 S.E.2d 211 (2010).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 238.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 838 et seq., 896.

ALR. — Liability for automobile accident, other than direct collision with pedestrian, as affected by reliance upon or disregard of stop-and-go signal, 2 ALR3d 12.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 ALR3d 155.

Liability for automobile accident at in-

tersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 ALR3d 180.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 ALR3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 ALR3d 557.

40-6-22. Pedestrian-control signals.

Whenever special pedestrian-control signals exhibiting the words WALK or DON'T WALK or symbols so directing a pedestrian are in place, such signals shall indicate as follows:

(1) **Word or symbol message WALK.** Pedestrians facing such signal may proceed across the roadway in the direction of the signal. Every driver of a vehicle shall stop and remain stopped for such pedestrians; and

(2) **Flashing or steady DON'T WALK.** No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the WALK signal shall proceed to sidewalk or safety island while the DON'T WALK signal is showing. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 36; Code 1933, § 68A-203, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 229, § 2; Ga. L. 2013, p. 141, § 40/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modern-

ize, and correct the Code, revised punctuation in paragraphs (1) and (2).

JUDICIAL DECISIONS

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Pedestrian's duty to exercise ordi-

nary care. — O.C.G.A. §§ 40-6-21 and 40-6-22 mandate that the driver of a vehicle shall yield the right of way to a pedestrian lawfully crossing an intersection; however, those statutes do not abrogate a pedestrian's duties to exercise ordinary care for the pedestrian's own safety and avoid the consequences of any negligence on the part of others. *Gaffron v. Metropolitan Atlanta Rapid Transit Auth.*, 229 Ga. App. 426, 494 S.E.2d 54 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 229.

ALR. — Liability for collision of auto-

mobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 ALR3d 155.

40-6-23. Flashing red or yellow signals.

Flashing signal indications shall have the following meanings:

(1) **Flashing red (stop signal)** — When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line or, if there is no stop line, before entering the

crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign;

(2) **Flashing yellow (caution signal)** — . When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 37; Code 1933, § 68A-204, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Sufficient evidence to find defendant drivers negligent. — Under an application of the rules of law to the facts, the jury was authorized to find from the evidence adduced upon the trial, and the reasonable inferences to be drawn therefrom, that the defendant drivers were grossly negligent in causing the plaintiff's injuries. *Lawrence v. Hayes*, 92 Ga. App. 778, 90 S.E.2d 102 (1955).

Cited in *State v. Shabazz*, 291 Ga. App. 751, 662 S.E.2d 828 (2008).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 840, 841.

ALR. — Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 ALR3d 180.

Liability for automobile accident at intersection as affected by reliance upon or

disregard of unchanging caution, slow, danger, or like sign or signal, 3 ALR3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 ALR3d 557.

40-6-24. Lane direction control signals.

When lane direction control signals are placed over the individual lanes of a street or road, vehicular traffic may travel in any lane over which a green signal is shown but shall not enter or travel in any lane over which a red signal is shown, provided that a vehicle may enter a lane over which a yellow or amber signal is shown for purposes of making a left turn only. (Ga. L. 1966, p. 183, § 3; Code 1933, § 68A-204.1, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Designation of travel lanes for exclusive or preferential use of buses and other designated passenger vehicles, § 32-9-4.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1953, Nov.-Dec. Sess., p. 556, are included in the annotations for this Code section.

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a

matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Cited in *State v. Shabazz*, 291 Ga. App. 751, 662 S.E.2d 828 (2008).

40-6-25. Display of unauthorized signs, signals, or markings.

(a) No person shall place, maintain, or display upon or in view of any highway any sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

(b) No person shall maintain or place nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(c) This Code section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(d) Every such prohibited sign, signal, or marking is declared to be a public nuisance, and the authority having jurisdiction over the highway is empowered to remove it or cause it to be removed without notice. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 38; Code 1933, § 68A-205, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Provisions regarding erection, placement, or maintenance of unauthorized traffic signs or signals, § 32-6-51.

Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia, see 14 Mercer L. Rev. 308 (1963).

Law reviews. — For article, "Recom-

40-6-26. Interference with official traffic-control devices or railroad signs or signals.

(a) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control

device or any railroad sign or signal or any inscription, shield, or insignia thereon or any other part thereof.

(b) No person shall, without lawful authority, drive around or through or ignore any official traffic-control device so as to go onto an officially closed highway or road or onto a section of highway or road before it has been officially opened to the public. This Code section shall not apply to police officers in the performance of their duties, to individuals domiciled or making their livelihood within the affected area, or to any person authorized to be in the affected area by the appropriate municipal, county, or state officer. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 39; Code 1933, § 68A-206, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Provisions regarding interference with traffic-control devices, § 32-6-50.

JUDICIAL DECISIONS

Unwarranted alteration of stop sign negligence per se. — Whether a traffic control device was initially erected by authority of the State Highway Department (now Department of Transportation) or by local municipal authorities, an unwarranted alteration of the stop sign (allegedly replaced after installation of gas

lines so as to face in the wrong direction) constitutes a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 and is negligence per se. *Richards & Assocs. v. Studstill*, 92 Ga. App. 853, 90 S.E.2d 56 (1955), rev'd on other grounds, 212 Ga. 375, 93 S.E.2d 3 (1956).

40-6-27. Installation of blue retroreflective raised pavement markers.

It shall be unlawful for any person to place or install any blue retroreflective raised pavement marker on any public highway, road, or street, provided that such marker may be placed or installed by the state or any county, municipality, fire department, or employee or agent thereof solely for the purpose of marking the location of fire hydrants. (Code 1981, § 40-6-27, enacted by Ga. L. 1991, p. 943, § 1.)

ARTICLE 3

DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, FOLLOWING TOO CLOSELY

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 245 et seq.

Am. Jur. Proof of Facts. — Negli-

gence of Driver During Overtaking and Passing Maneuver, 29 POF2d 121.

Negligent Left Turn of Motor Vehicle, 35 POF2d 405.

Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or Pass, 31 POF3d 145.

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 ALR 459; 23 ALR 418.

Validity of regulations as to part of street to be used by moving vehicles, 29 ALR 1348.

Responsibility for collision at night of automobiles, one of which, with lights on, is standing or moving on wrong side of road, 59 ALR 590.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 104 ALR 485.

Constitutionality, construction, and application, of statute prescribing special precautions in passing stopped automobile, 108 ALR 987.

Automobile accidents on street or high-

way divided by parkway or other neutral strip, 165 ALR 1418.

Liability for collision due to swaying or swinging of motor vehicle or trailer, 1 ALR2d 167.

Negligence of motorist colliding with vehicle approaching in wrong lane, 47 ALR2d 6.

Negligence of motorist as to injury or damage occasioned in avoiding collision with vehicle approaching in wrong lane, 47 ALR2d 119.

Custom or practice of drivers of motor vehicles as affecting question of negligence, 77 ALR2d 1327.

Gross negligence, recklessness, or the like, within "guest" statute, predicated upon conduct in passing cars ahead or position of car on wrong side of the road, 6 ALR3d 832.

40-6-40. Vehicles to drive on right side of roadway; exceptions.

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway, provided that any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such a distance as to constitute an immediate hazard;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway restricted to one-way traffic.

(b) Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center of the roadway except when authorized by official traffic-control devices designating certain lanes to the left of

the center of the roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under paragraph (2) of subsection (a) of this Code section. However, this subsection shall not be construed as prohibiting the crossing of the center of the roadway in making a left turn into or from an alley, private road, or driveway.

(d) No two vehicles shall impede the normal flow of traffic by traveling side by side at the same time while in adjacent lanes, provided that this Code section shall not be construed to prevent vehicles traveling side by side in adjacent lanes because of congested traffic conditions. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 55; Ga. L. 1967, p. 542, § 1; Ga. L. 1968, p. 1065, § 1; Code 1933, § 68A-301, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For article surveying developments in Georgia torts law from

mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981).

JUDICIAL DECISIONS

Negligence per se. — After the defendant was charged with crossing the centerline in violation of O.C.G.A. § 40-6-40(a) at the time the defendant hit the plaintiff's automobile head-on, it was held that a violation of the Uniform Rules of the Road prima facie establishes negligence per se in the absence of a valid defense, and the burden then shifts to the defendant to show that the violation was unintentional and in the exercise of ordinary care. *Cox v. Cantrell*, 181 Ga. App. 722, 353 S.E.2d 582 (1987).

Sufficient evidence supported conviction. — Sufficient evidence supported a defendant's conviction of driving on the wrong side of the road in violation of O.C.G.A. § 40-6-40; while the defendant claimed that, when the collision occurred, the defendant was swerving to avoid another car, an eyewitness disputed this claim, testifying that no other vehicle caused the defendant to swerve, and the jury, as arbiter of fact, was entitled to believe the eyewitness. *Dotson v. State*, 276 Ga. App. 418, 623 S.E.2d 252 (2005).

Sufficient evidence supported the defendant's conviction for driving on the wrong side of the roadway because the defendant, who was traveling southbound on a highway, veered off the west shoulder, then veered back onto the roadway and traveled across the southbound and northbound lanes, left the roadway on the east

shoulder, rotated clockwise, and struck a tree, resulting in a fatality and other serious injuries. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Offense justified stop. — Investigating officer had a reasonable articulable suspicion to stop the defendant's vehicle based on a violation of O.C.G.A. § 40-6-40 for driving on the wrong side of the road; hence, the defendant's motion to suppress was properly denied on this ground. *Dunbar v. State*, 283 Ga. App. 872, 643 S.E.2d 292 (2007).

Trial court did not err in denying the defendant's motion to suppress because the officer was authorized to perform a traffic stop since the officer saw the defendant cross the solid double yellow line and then drive on the wrong side of the road; because driving on the wrong side of the road was itself a traffic offense, O.C.G.A. § 40-6-40, the officer had a reasonable articulable suspicion that a traffic offense had occurred. *Parker v. State*, 317 Ga. App. 93, 730 S.E.2d 717 (2012).

Trial court erred in granting the defendant's motion to suppress because the undisputed facts showed that the officer observed the defendant veer into and drive on the wrong side of the road and because driving on the wrong side was a traffic offense under O.C.G.A. § 40-6-40, the officer had reasonable articulable suspicion that a traffic offense had occurred.

State v. Zeth, 320 Ga. App. 140, 739 S.E.2d 443 (2013).

Obstructions. — Object need not be stationary in order to be an obstruction. Smith v. Lott, 246 Ga. 366, 271 S.E.2d 463 (1980).

Motor vehicle may be an obstruction when the vehicle is operated on a public road in a manner which could not be generally or reasonably anticipated, taking into account all of the circumstances and conditions present at the time and place, and thereby hinders or impedes the proper travel on the road. Except in clear and palpable cases, the issue of when a vehicle is so operated is one for the jury. Smith v. Lott, 246 Ga. 366, 271 S.E.2d 463 (1980).

Combine driven at eight to 18 miles per hour, the width of which was such that the combine's left hand portion protruded across the center line of the highway, could not be said as a matter of law not to amount to an obstruction. Smith v. Lott, 246 Ga. 366, 271 S.E.2d 463 (1980).

When read together, O.C.G.A. § 40-6-46(c) and paragraph (a)(2) of O.C.G.A. § 40-6-40 provide that there is no violation of the no-passing zone statute when an obstruction exists making it necessary to drive to the left of the center of the highway, provided that any person so doing must yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard. Smith v. State, 237 Ga. App. 77, 514 S.E.2d 710 (1999).

Whether the trash truck that the defendant passed in a no-passing zone posed an obstruction allowing the defendant to cross the double yellow centerline in order to pass the vehicle was a question for the trier of fact to resolve; there was evidence to support the defendant's conviction under O.C.G.A. § 40-6-46. Parker v. State, 276 Ga. App. 9, 622 S.E.2d 403 (Oct. 18, 2005).

Because the defendant committed a traffic violation by crossing a solid yellow line in the roadway, and was not legitimately faced with an obstruction, despite claiming that it was undoubtedly convenient to pass the slow moving van driving ahead, a police officer had a reasonable

and articulable suspicion to initiate a traffic stop of the defendant's vehicle. Przyjemski v. State, 290 Ga. App. 22, 658 S.E.2d 807 (2008).

Jury question as to obstruction. — Slow-moving farm vehicle could constitute a roadway obstruction, and whether the vehicle does so is a jury question. The trial court's charge was authorized when the instruction was that a vehicle driver can cross over the centerline to avoid an obstruction, providing any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard. This does not amount to authority to violate the law as to "passing zones." Foskey v. Williams Bros. Trucking Co., 197 Ga. App. 715, 399 S.E.2d 484 (1990).

Driving on right not absolute. — Statutory requirements to drive on right side of roadway, on their face, are not absolute and do not prohibit driving on the left at all places and in all circumstances. Davis v. Metzger, 119 Ga. App. 750, 168 S.E.2d 866 (1969).

Failure to drive on correct side of road established. — Juvenile's adjudication as a delinquent after being charged with delinquency for reckless driving for passing in a no-passing zone, serious injury by motor vehicle, and feticide was upheld on appeal as the testimony and evidence clearly established that although the juvenile may have begun to pass in a passing zone, the juvenile failed to consider how far the passing zone continued and the juvenile continued to pass at a high rate of speed well into the no-passing zone knowing the approach of the crest of a hill and a curve was coming, yet the juvenile never once sought to slow down and return to the right lane behind the vehicle the juvenile was attempting to pass. In the Interest of A.H., 291 Ga. App. 861, 663 S.E.2d 270 (2008).

Evidence of reckless driving supported vehicular homicide conviction. — Evidence that the defendant drove after the defendant admittedly consumed methadone, Xanax (alprazolam), and Percocet and that the defendant crossed over the center line of the road in

violation of O.C.G.A. § 40-6-40(a) and collided with another vehicle, killing the driver, was sufficient to show the defendant drove while impaired and drove recklessly under O.C.G.A. § 40-6-390(a), supporting the defendant's vehicular homicide conviction under O.C.G.A. § 40-6-393(a). *Wright v. State*, 304 Ga. App. 651, 697 S.E.2d 296 (2010).

Necessity or justification defense not applicable. — Defendant's apparent claim that the defendant was justified in violating O.C.G.A. § 40-6-40(a), the statute regarding driving on the wrong side of the roadway, due to the configuration of the ice cream truck the defendant was driving had to be rejected as the statute did not recognize an exception for necessity or justification. *Momodu v. State*, 2003 Ga. App. LEXIS 629 (May 21, 2003).

Violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556) is a misdemeanor. *Gordy v. State*, 93 Ga. App. 743, 92 S.E.2d 737 (1956).

State must prove that road public. — When the accused was charged with the offense of involuntary manslaughter while in the commission of unlawful acts, in that the accused operated an automobile upon a certain public road at a speed in excess of 60 miles per hour and to the left of the center of the road, it was necessary for the state to prove that the road

was, in fact, a public road in order to prove that part of the indictment alleging unlawful acts. *Bond v. State*, 104 Ga. App. 627, 122 S.E.2d 310 (1961).

Jury instruction held proper. — Because a challenged jury instruction on the law of obstruction was given directly from O.C.G.A. § 40-6-40(a)(2) and was quoted from an earlier Supreme Court of Georgia opinion, such was a correct statement of the law and was properly adjusted to the circumstances of the case. *Decatur's Best Taxi Serv., Inc. v. Smith*, 282 Ga. App. 731, 639 S.E.2d 482 (2006).

Cited in *Berrian v. State*, 139 Ga. App. 571, 228 S.E.2d 737 (1976); *Lott v. Smith*, 153 Ga. App. 365, 265 S.E.2d 291 (1980); *Reed v. Dixon*, 153 Ga. App. 604, 266 S.E.2d 286 (1980); *Lott v. Smith*, 156 Ga. App. 826, 275 S.E.2d 720 (1980); *Moore v. State*, 160 Ga. App. 870, 288 S.E.2d 585 (1982); *Malpass v. State*, 173 Ga. App. 690, 327 S.E.2d 753 (1985); *Mortimer v. State*, 177 Ga. App. 679, 340 S.E.2d 649 (1986); *Laymac v. State*, 181 Ga. App. 737, 353 S.E.2d 559 (1987); *Hendrix v. State*, 186 Ga. App. 665, 368 S.E.2d 181 (1988); *Arnold v. Arnold*, 197 Ga. App. 103, 397 S.E.2d 724 (1990); *State v. Tate*, 208 Ga. App. 117, 430 S.E.2d 9 (1993); *Caffey v. State*, 210 Ga. App. 395, 436 S.E.2d 102 (1993); *Plemmons v. State*, 755 S.E.2d 205, 2014 Ga. App. LEXIS 69 (2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 245 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 715, 744, 745.

ALR. — Right or duty to turn in viola-

tion of law of road to avoid traveler, or obstacle, 63 ALR 277; 113 ALR 1328.

Applicability of *res ipsa loquitur* doctrine where motor vehicle leaves road, 79 ALR2d 6.

40-6-41. Passing vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and, upon roadways having width for not more than one lane of traffic in each direction, each driver shall give to the other at least one-half of the main traveled portion of the roadway or as nearly one-half as possible. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 56; Code 1933, § 68A-302, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For comment on *Roberts v. Phillips*, 35 Ga. App. 733, 134 S.E.

837 (1926), see 1 Ga. L. Rev. No. 1, p. 49 (1927).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 628 and 1770(52) are included in the annotations for this Code section.

Purpose of section. — Former Code 1933, § 68A-302 required a driver to drive on the right side of the road except under certain circumstances and to give at least one-half of the main-traveled portion of the road to oncoming traffic, respectively. *Berrian v. State*, 139 Ga. App. 571, 228 S.E.2d 737 (1976) (see O.C.G.A. § 40-6-41).

Vehicle meeting streetcar should turn to right. — When a vehicle which is able to turn either to the right or the left meets a streetcar, which under its franchise can travel only along the one fixed way marked out by its track, the vehicle meeting the streetcar should, in the absence of any reason preventing, itself turn to the right side. *Athens Ry. & Elec. Co. v. McKinney*, 16 Ga. App. 741, 86 S.E. 83 (1915) (decided under former Code 1910, § 628).

Constitutionality of provision making penal failure to turn vehicle to right. — So much of former Code 1910, § 1770 as undertook to make penal the failure of the operator of a motor vehicle, when meeting a vehicle approaching in the opposite direction, to "turn his vehicle to the right so as to give one-half of the traveled roadway, if practicable, and a fair opportunity to the other to pass by without unnecessary interference" is too uncertain and indefinite in its terms to be capable of enforcement. *Heath v. State*, 36 Ga. App. 206, 136 S.E. 284 (1926), for comment, see 1 Ga. L. Rev. 49 (1927), (decided under former Code 1910, § 1770(52)).

When two cars are "meeting" each other. — When a car traveling along a public highway had been brought to a stop

in the highway, and another car was approaching it from the front, both cars, notwithstanding one was stationary, were "meeting" each other in the sense of former Code 1910, § 1770. *Roberts v. Phillips*, 35 Ga. App. 743, 134 S.E. 837 (1926), aff'd, 166 Ga. 897, 144 S.E. 651 (1928) (decided under former Code 1910, § 1770(52)).

Proof of failure to give one-half of roadway not found. — Charges in an indictment that the defendant failed and refused to give the deceased a fair opportunity to pass by without unnecessary interference, it being practical to give one-half of the travelled roadway, were not sustained by the proof, since the evidence showed that the cars collided on a temporary bridge which was less than 12 feet wide and too narrow to permit two automobiles to pass each other thereon. *Shupe v. State*, 36 Ga. App. 286, 136 S.E. 331 (1927) (decided under former Code 1910, § 1770(52)).

No duty to construct impact-proof guardrails. — There is no legal duty on a railroad company to construct the guardrails of a bridge sufficiently strong to withstand the impact of an automobile going at the rate of 20 to 25 miles per hour. *Corley v. Cobb County*, 21 Ga. App. 219, 93 S.E. 1015 (1917); *Eberhart v. Seaboard Air-Line Ry.*, 34 Ga. App. 49, 129 S.E. 2, cert. denied, 34 Ga. App. 836 (1925) (decided under former Code 1910, § 1770(52)).

Driving on right not absolute. — Statutory requirements to drive on right side of roadway, on their face, are not absolute and do not prohibit driving on the left at all places and in all circumstances. *Davis v. Metzger*, 119 Ga. App. 750, 168 S.E.2d 866 (1969).

Cited in *Raybon v. Reimers*, 138 Ga. App. 511, 226 S.E.2d 620 (1976); *Wilson v. State*, 147 Ga. App. 560, 249 S.E.2d 361 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 245, 252.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 709, 711, 715.

ALR. — Automobiles: duty and liability with respect to giving audible signal before passing, 22 ALR3d 325.

40-6-42. Overtaking and passing generally.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules stated in this article:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 57; Code 1933, § 68A-303, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For comment on Roberts v. Phillips, 35 Ga. App. 733, 134 S.E.

837 (1926), see 1 Ga. L. Rev. No. 1, p. 49 (1927).

JUDICIAL DECISIONS

Driver unaware that vehicle being overtaken. — O.C.G.A. § 40-6-42 does not intend to impose absolute criminal or civil liability upon the driver of a vehicle who does not know, nor are the facts to show the driver should have known, that the driver's vehicle was being overtaken. James v. Allen, 173 Ga. App. 636, 327 S.E.2d 501 (1985).

Evidence sufficient to support jury verdict. — Trial court properly denied a motion for judgment notwithstanding the verdict since the movant, driving a van, had attempted to overtake and pass a motorcycle without changing lanes, resulting in a collision. The evidence was such that the jury could have reasonably found that the movant violated both O.C.G.A. §§ 40-6-42 and 40-6-312(a). Neiswonger v. Janics, 196 Ga. App. 607, 396 S.E.2d 553 (1990).

Evidence sufficient to find viola-

tion. — When the evidence in a criminal prosecution authorized a finding that, in attempting to pass an automobile traveling in the same direction, the defendant showed a purpose to take a known chance of perpetrating an injury on another, in that the defendant knew that automobiles were likely to be approaching on the highway from the opposite direction, and was so indifferent to the rights of others that the defendant acted as if they did not exist, the defendant was guilty, not merely of ordinary negligence, but of a higher degree thereof, to wit, gross or criminal negligence. Collins v. State, 66 Ga. App. 325, 18 S.E.2d 24 (1941).

When two automobiles collided near the front of a parked automobile, which the defendant was passing, while the defendant's car was to the left of the center of the highway and on the plaintiff-driver's side of the road, this was a violation of

former Code 1933, § 68-303 and was negligence per se. *Hodges v. Pilgrim*, 88 Ga. App. 256, 76 S.E.2d 454 (1953).

Audible warning by overtaking vehicle unnecessary. — Driver of a vehicle overtaking another vehicle proceeding in the same direction does not have to sound a horn or give any other audible warning

before passing. *Aultman v. Spellmeyer*, 111 Ga. App. 769, 143 S.E.2d 403 (1965).

Cited in *Hanover Ins. Co. v. Rollins*, 136 Ga. App. 595, 222 S.E.2d 91 (1975); *Smith v. Southeastern Stages, Inc.*, 479 F. Supp. 593 (N.D. Ga. 1977); *Burnett v. Doster*, 144 Ga. App. 443, 241 S.E.2d 319 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 247, 248.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 715, 741 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Rights and liabilities as between drivers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 ALR2d 317.

Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction, 38 ALR2d 114.

Reciprocal rights, duties, and liabilities where motor vehicle driver, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 ALR2d 232.

Duty and liability as to signaling following driver to pass or giving him warning of approaching danger, 48 ALR2d 252.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 ALR2d 850.

Duty and liability of overtaken driver with respect to adjusting speed to that of passing vehicle, 91 ALR2d 1260.

Automobiles: duty and liability with respect to giving audible signal before passing, 22 ALR3d 325.

40-6-43. When overtaking and passing on the right permitted.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn; or

(2) Upon a street or highway with unobstructed pavement of sufficient width for two or more lanes of moving vehicles in the direction being traveled by the overtaking vehicle.

(b) If otherwise authorized, the driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement shall not be made by driving off the roadway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 58; Code 1933, § 68A-304, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Jury instruction proper. — See *Hogan v. Pony Express Courier Corp.*, 195 Ga. App. 592, 394 S.E.2d 391 (1990).

Cited in *Thomas v. State*, 294 Ga. App. 108, 668 S.E.2d 540 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 251.

C.J.S. — 60A C.J.S., Motor Vehicles, § 744.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Liability for injury or damage growing

out of pulling out of parked motor vehicle, 29 ALR2d 107.

Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction, 38 ALR2d 114.

Automobiles: duty and liability with respect to giving audible signal before passing, 22 ALR3d 325.

40-6-44. Limitations on overtaking and passing on the left.

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event, the overtaking vehicle shall return to an authorized lane of travel as soon as practicable and, in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within 200 feet of any approaching vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 58A; Code 1933, § 68A-305, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Lesser included offense of vehicular homicide. — Defendant could not be prosecuted for the offense of improper passing and vehicular homicide since the defendant had already pled guilty to a charge of improper passing and paid a fine because improper passing was necessarily a lesser included offense of vehicular homicide. *State v. Williams*, 214 Ga. App. 701, 448 S.E.2d 700 (1994).

Violation as negligence per se. — Violation of that part of this statute which prohibits passing to the left of the center of the road where the way ahead is not clear would constitute negligence per se, unless the violation was the result of an emergency unmixed with any fault of the driver; whether or not such an emergency existed is ordinarily a jury question. *Hagans v. State*, 91 Ga. App. 55, 84 S.E.2d 852 (1954).

Evidence sufficient to find violation. — After two automobiles collided near the front of a parked automobile, which the defendant was passing, while the defendant's car was to the left of the center of the highway and on plaintiff-driver's side of the road, this was a violation of this statute and was negligence per se. *Hodges v. Pilgrim*, 88 Ga. App. 256, 76 S.E.2d 454 (1953).

Evidence held sufficient. — See *Basile v. State*, 183 Ga. App. 853, 360 S.E.2d 414, cert. denied, 183 Ga. App. 905, 360 S.E.2d 414 (1987).

Cited in *Hanover Ins. Co. v. Rollins*, 136 Ga. App. 595, 222 S.E.2d 91 (1975); *Simpson v. Reed*, 186 Ga. App. 297, 367 S.E.2d 563 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 247, 248.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 715, 741 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Rights and liabilities as between driv-

ers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 ALR2d 317.

Reciprocal rights, duties, and liabilities where motor vehicle driver, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 ALR2d 232.

40-6-45. Further limitations on driving on left of center of roadway.

(a) No vehicle shall be driven on the left side of a roadway designed and authorized for traffic traveling in opposite directions under the following conditions:

(1) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) When traversing any:

(A) Intersection which is clearly marked by a solid barrier line placed on the right-hand element of a combination stripe along the center or lane line or by a solid double yellow line; or

(B) Railroad grade crossing; or

(3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway nor under the conditions described in paragraph (2) of subsection (a) of Code Section 40-6-40 nor to the driver of a vehicle turning left into or from an alley, private road, driveway, or roadway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 59; Code 1933, § 68A-306, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 1313, § 3.)

JUDICIAL DECISIONS

Constitutionality. — See *Garrett v. Department of Pub. Safety*, 237 Ga. 413, 228 S.E.2d 812 (1976).

Finding of negligence by defendant. — When the defendant could have avoided collision by turning to left, failure to turn was negligence. When, under the allegations of the petition, the defendant

by defendant's asserted negligence in traveling at an illegal and excessive speed while approaching an intersection and in failing to maintain a vigilant lookout produced a condition of danger of imminent collision with the plaintiff's auto which could have been averted by defendant's turning to the left side of the roadway, the

defendant's failure to turn under the alleged conditions was a proper specification of negligence, notwithstanding the provisions of Ga. L. 1953, Nov.-Dec. Sess., p. 556. *Fisher v. Temple*, 109 Ga. App. 859, 137 S.E.2d 545 (1964).

Cited in *Lott v. Smith*, 153 Ga. App. 365, 265 S.E.2d 291 (1980); *Gray v. State*, 156 Ga. App. 117, 274 S.E.2d 115 (1980); *Whitehead v. Cogar*, 180 Ga. App. 812, 350 S.E.2d 821 (1986); *Worthy v. Kendall*, 222 Ga. App. 324, 474 S.E.2d 627 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 249, 250.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 659 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Rights and liabilities as between driv-

ers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 ALR2d 317.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 ALR2d 850.

40-6-46. No-passing zones.

(a) The Department of Transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left side of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones and, when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof. Such no-passing zones shall be clearly marked by a solid barrier line placed on the right-hand element of a combination stripe along the center or lane line or by a solid double yellow line.

(b) Where signs or markings are in place to define a no-passing zone as set forth in subsection (a) of this Code section, no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(c) This Code section does not apply under the conditions described in paragraph (2) of subsection (a) of Code Section 40-6-40 nor to the driver of a vehicle turning left into or from an alley, private road, or driveway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 60; Ga. L. 1959, p. 144, § 1; Code 1933, § 68A-307, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

No judicial notice of familiarity with highway manual. — Interpreta-

tion of signs and signals as provided by the manual of the State Highway Board

(now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Purpose of zones. — No-passing zones were established for the benefit of oncoming motorists traveling in the opposite direction, and for the benefit of one whose vehicle is being passed. *Southeast Transp. Corp. v. Hogan Livestock Co.*, 133 Ga. App. 825, 212 S.E.2d 638 (1975).

Existence of obstruction. — When read together, O.C.G.A. § 40-6-40(a)(2) and subsection (c) of O.C.G.A. § 40-6-46 provide that there is no violation of the no-passing zone statute when an obstruction exists making it necessary to drive to the left of the center of the highway, provided that any person so doing must yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard. *Smith v. State*, 237 Ga. App. 77, 514 S.E.2d 710 (1999).

Whether the trash truck that the defendant passed in a no-passing zone posed an obstruction allowing the defendant to cross the double yellow centerline in order to pass the vehicle, was a question for the trier of fact to resolve; there was evidence to support the defendant's conviction under O.C.G.A. § 40-6-46. *Parker v. State*, 276 Ga. App. 9, 622 S.E.2d 403 (Oct. 18, 2005).

Because the defendant committed a traffic violation by crossing a solid yellow line in the roadway, and was not legitimately faced with an obstruction, despite claiming that it was undoubtedly convenient to pass the slow moving van driving ahead, a police officer had a reasonable and articulable suspicion to initiate a traffic stop of the defendant's vehicle. *Przyjemski v. State*, 290 Ga. App. 22, 658 S.E.2d 807 (2008).

Violation of statute clearly established. — Juvenile's adjudication as a delinquent after being charged with delinquency for reckless driving for passing in a no-passing zone, serious injury by motor vehicle, and feticide was upheld on appeal as the testimony and evidence clearly established that although the juvenile may have begun to pass in a passing zone, the juvenile failed to consider how far the passing zone continued and the juvenile continued to pass at a high rate of speed well into the no-passing zone knowing the approach of the crest of a hill and a curve was coming, yet the juvenile never once sought to slow down and return to the right lane behind the vehicle the juvenile was attempting to pass. *In the Interest of A.H.*, 291 Ga. App. 861, 663 S.E.2d 270 (2008).

Cited in *Hanover Ins. Co. v. Rollins*, 136 Ga. App. 595, 222 S.E.2d 91 (1975); *Lott v. Smith*, 153 Ga. App. 365, 265 S.E.2d 291 (1980); *Duncan v. Deits*, 185 Ga. App. 136, 363 S.E.2d 601 (1987); *Worthy v. Kendall*, 222 Ga. App. 324, 474 S.E.2d 627 (1996); *Roberts v. Dove*, 234 Ga. App. 853, 508 S.E.2d 213 (1998); *Haynes-Turner v. State*, 289 Ga. App. 652, 658 S.E.2d 203 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 249.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 749, 750.

40-6-47. One-way roadways and rotary traffic islands.

(a) The Department of Transportation and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all of such times as shall be indicated by official traffic-control devices.

(b) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic-control devices.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 61; Code 1933, § 68A-308, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

OPINIONS OF THE ATTORNEY GENERAL

Erection of traffic-control device by municipality on state road. — Municipality may not, by ordinance, seek to regulate streets which are a part of the state highway system, unless the municipality is attempting to erect or maintain a

traffic-control device on a road which is a part of the state highway system, and written approval has first been obtained from the department. 1974 Op. Att'y Gen. No. U74-94.

40-6-48. Driving on roadways laned for traffic.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this Code section, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

(2) Upon a roadway which is divided into three lanes, and provides for two-way movement of traffic, with two lanes in one direction, a vehicle being driven in a continuous or center lane shall have the right of way when overtaking and passing another vehicle traveling in the same direction;

(3) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices or road striping;

(4) Official traffic-control devices may be erected directing specified traffic, including but not limited to buses or trucks, to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the

roadway, and drivers of vehicles shall obey the directions of every such device; and

(5) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of every such device. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 62; Ga. L. 1967, p. 542, §§ 2, 3; Code 1933, § 68A-309, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Designation of travel lanes for exclusive or preferential use of buses and other designated passenger vehicles, § 32-9-4. Central lane for turning, § 40-6-126.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, “and” was added at the end of paragraph (4).

JUDICIAL DECISIONS

Justified stop. — Police officer’s observation of the defendant weaving out of the defendant’s lane justified the finding of the court that the stopping of the car was not pretextual, but justified. *Davis v. State*, 236 Ga. App. 32, 510 S.E.2d 889 (1999).

Because the defendant was witnessed crossing the white traffic line on two occasions, the stop of the defendant’s vehicle was valid under Ga. Const. 1983, Art. I, Sec. I, Para. XIII; the defendant’s weaving without reason into nearby lanes violated O.C.G.A. § 40-6-48(1) and justified the stop, and the officer’s actual motive in stopping the defendant was inconsequential. *Rayo-Leon v. State*, 281 Ga. App. 74, 635 S.E.2d 368 (2006).

In an in rem forfeiture case in which: (1) the initial traffic stop of the van was reasonable and did not implicate the Fourth Amendment since a law enforcement officer had probable cause to believe that the claimant violated Georgia traffic law by twice violating O.C.G.A. § 40-6-48; (2) the seven minutes it took to effectuate the traffic stop was reasonable; and (3) the search of the van was lawful because of a drug dog’s positive alert, the district court did not err in denying a claimant’s motion to suppress. *United States v. \$ 175,722.77*, in *United States Currency*, No. 06-11701, 2007 U.S. App. LEXIS 10899 (11th Cir. May 8, 2007) (Unpublished).

Defendant’s Fourth Amendment rights were not violated by a traffic stop because there was probable cause that the defen-

dant violated O.C.G.A. § 40-6-48(1) by weaving between lanes, various factors went beyond an inchoate hunch and amounted to reasonable suspicion of other illegal activity, and prolonging detention for three minutes was not unreasonable. Also, any discovery violation under Fed. R. Crim. P. 12(b)(4) did not prejudice the defendant’s substantial rights in that it was irrelevant to the outcome of the suppression hearing. *United States v. Robinson*, 272 Fed. Appx. 774 (11th Cir. 2008) (Unpublished).

Before an officer stopped the defendant’s vehicle, the officers observed the defendant fail to maintain the defendant’s lane in violation of O.C.G.A. § 40-6-48(1) and such a violation provided the officer with probable cause for the stop. *United States v. Garcia*, 284 Fed. Appx. 791 (11th Cir. 2008) (Unpublished).

Defendant’s conviction for DUI per se in violation of O.C.G.A. § 40-6-391(a)(5) was upheld. The traffic stop of the defendant was proper because the officer observed the defendant driving erratically, including sudden braking and weaving within the lane, even though the defendant was acquitted of failure to operate the vehicle within a single lane, O.C.G.A. § 40-6-48(1). *Ivey v. State*, 301 Ga. App. 796, 689 S.E.2d 100 (2009).

Trial court did not err in denying the defendant’s motion to suppress because the officer was justified in stopping the defendant’s vehicle based on the videotaped evidence that established that the

officer observed the defendant's vehicle failing to maintain the vehicle's lane in violation of O.C.G.A. § 40-6-48(1). *Acree v. State*, 319 Ga. App. 854, 737 S.E.2d 103 (2013).

Officer's observation of the defendant's vehicle crossing the fog line three times provided sufficient justification for an initial traffic stop. *Calcaterra v. State*, 321 Ga. App. 874, 743 S.E.2d 534 (2013).

Officer's qualified immunity following traffic stop. — Officer was entitled to summary judgment based on qualified immunity as to an arrestee's Fourth Amendment claim regarding the stop of the arrestee's vehicle because the officer had arguable reasonable suspicion to stop the arrestee since the officer responded to an off-duty officer's report that the arrestee was driving at an unusual speed and weaving across the road, and the off-duty officer identified the vehicle. *Jenkins v. Gaither*, No. 12-15631, 2013 U.S. App. LEXIS 20296 (11th Cir. Oct. 4, 2013) (Unpublished).

Indictment. — Indictment stating that defendant "did fail to operate his motor vehicle entirely within a single lane of traffic. . ." was not deficient because the indictment did not allege that the defendant failed to ascertain whether the defendant could move from the defendant's lane safely. *Harridge v. State*, 243 Ga. App. 658, 534 S.E.2d 113 (2000).

Defendant's conviction for failure to keep the defendant's vehicle within a single lane of traffic could not stand; although there was evidence to support the charge, the accusation filed against the defendant stated the wrong road for where the violation occurred, and therefore, there was insufficient evidence to convict the defendant of the charge stated in the accusation. *Thrasher v. State*, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Inconsistent verdict could not form basis for attacking DUI conviction. — Fact that the jury found the defendant not guilty of a charge of failing to maintain a lane could not be a basis for attacking the guilty verdict for driving under the influence of alcohol under O.C.G.A. § 40-6-391(a)(1). *Renkiewicz v. State*, 283 Ga. App. 692, 642 S.E.2d 384 (2007).

Failure to request jury charge. — When the defendant did not request a

charge on a violation of O.C.G.A. § 40-6-48 as the predicate for finding the defendant guilty of the lesser included offense of vehicular homicide in the second degree, the charge that was given by the trial court was sufficient and there was no error. *Collum v. State*, 195 Ga. App. 42, 392 S.E.2d 301 (1990).

Suppression motion properly denied. — Because a sheriff's deputy lawfully stopped the defendant for twice crossing the center line in violation of O.C.G.A. § 40-6-48(1), and given that: (1) the deputy sheriff's specialized DUI training; and (2) the defendant's admission of ingesting alcohol, failure to maintain lane, bloodshot eyes, performances on several field sobriety tests, and strong odor of alcohol, the evidence seized in connection with the stop was admissible; moreover, the defendant's claim that the state failed to establish a violation of § 40-6-48(1) and the defendant's eventual acquittal of failure to maintain a lane were not determinative of whether the traffic stop was lawful. *Steinberg v. State*, 286 Ga. App. 417, 650 S.E.2d 268 (2007), cert. denied, 2008 Ga. LEXIS 113 (Ga. 2008).

Defendant unsuccessfully argued that a law enforcement officer lacked probable cause to make a stop because the officer caused the defendant to drive in an erratic, unsafe manner. What the testimony at the evidentiary hearing fairly showed was that the defendant, over a matter of seconds, attempted to make three lane changes, twice pulling into lanes occupied by other vehicles, causing one to brake and sound the vehicle's horn to avoid collision; the officer had probable cause to stop the defendant for the defendant's violations of O.C.G.A. §§ 40-6-48 and 40-6-123. *United States v. Pineda*, No. 1:06-cr-350-WSD, 2008 U.S. Dist. LEXIS 18137 (N.D. Ga. Mar. 10, 2008).

Evidence was sufficient to sustain a conviction since the arresting officer testified that the officer observed the defendant weave across the road. *Moore v. State*, 234 Ga. App. 332, 506 S.E.2d 685 (1998).

Testimony that the defendant weaved across the road and twice crossed over the center line was sufficient to support the defendant's conviction for improper lane

usage. *Arsenault v. State*, 257 Ga. App. 456, 571 S.E.2d 456 (2002).

Because an officer witnessed the defendant driving completely from one side of the lane to the other numerous times, and in doing so the defendant's wheels at least partially crossed over the center of the white line separating the lanes. This evidence was sufficient to support the defendant's conviction for failure to maintain lane. *Kuehne v. State*, 274 Ga. App. 668, 618 S.E.2d 702 (2005).

Convictions of driving under the influence of alcohol to the extent that it was less safe to drive, O.C.G.A. § 40-6-391(a)(1), reckless driving, O.C.G.A. § 40-6-390, and failure to maintain a lane, O.C.G.A. § 40-6-48 were supported by sufficient evidence since, when an officer stopped to assist the defendant, whose car was parked on the side of a road, the defendant told the officer that the defendant had driven off the road, the officer found tire marks and a fender in the area where the defendant ran off the road and the defendant's vehicle was missing its left front fender, the officer noticed a strong odor of alcohol on the defendant's breath, the defendant admitted to drinking for over four hours and could not tell the officer how many drinks had been consumed, and the defendant then failed field sobriety tests. *Taylor v. State*, 278 Ga. App. 181, 628 S.E.2d 611 (2006).

Defendant's conviction for failure to maintain a lane, in violation of O.C.G.A. § 40-6-48(1), was supported by sufficient evidence because the police officers noticed that the defendant's vehicle had front end damage and that it was dragging on the ground, and defendant admitted that the vehicle had hit a road sign, which was off the road; the police officers investigated the area where the incident occurred and noted that a road sign was down on the ground, which was consistent with the statement given by defendant. *Crenshaw v. State*, 280 Ga. App. 568, 634 S.E.2d 520 (2006).

Given evidence from an ensuing police officer identifying the defendant as the driver of the vehicle stopped, and because the jury was the judge of the credibility of the witnesses presented at trial, and was

authorized to reject the defendant's alibi defense, sufficient evidence was presented to support the defendant's convictions for reckless driving, failure to maintain a lane, driving with defective equipment, fleeing or attempting to elude a police officer, and obstruction of a police officer. *Daniel v. State*, 282 Ga. App. 291, 638 S.E.2d 430 (2006).

Fact that the defendant's vehicle exited the roadway before coming to rest upside down in an adjacent gore area provided sufficient evidence that the defendant failed to maintain the defendant's lane of traffic, O.C.G.A. § 40-6-48(1). *Schlanger v. State*, 290 Ga. App. 407, 659 S.E.2d 823 (2008).

There existed sufficient evidence to support defendant's convictions for failing to maintain a lane based on the testimony of a police officer who observed the defendant cross one lane to another more than seven times without signaling, which at one point required the officer to swerve to avoid being struck by the defendant's vehicle. *Bell v. State*, 291 Ga. App. 437, 662 S.E.2d 248 (2008).

Evidence supported conviction of failure to maintain lane, although in denying a motion to suppress, the trial court had stated that it was not clear whether a criminal violation had occurred, only issue at that time was the legality of the stop, which did not depend on finding that actual criminal violation had occurred; later finding of guilt of failure to maintain lane was supported by undisputed evidence that the defendant drove into a pothole and that it was not located in the lane of travel. *Camacho v. State*, 292 Ga. App. 120, 663 S.E.2d 364 (2008), cert. denied, No. S08C1769, 2008 Ga. LEXIS 872 (Ga. 2008).

Testimony of deputies who observed a defendant driving erratically and a paramedic who examined the defendant at the stop scene to the effect that the defendant was under the influence of alcohol to the extent that the defendant was a less safe driver, along with blood alcohol evidence, was sufficient for the jury to find beyond a reasonable doubt that the defendant was guilty of driving under the influence of alcohol to the extent that the defendant was a less safe driver, and of failing to

safely maintain the vehicle within a marked traffic lane in violation of O.C.G.A. §§ 40-6-48(1) and 40-6-391(a)(1). *Stubblefield v. State*, 302 Ga. App. 499, 690 S.E.2d 892 (2010).

Evidence that the defendant failed to maintain the vehicle within a single lane when making a wide right turn and then again after completing the turn supported the defendant's conviction for failure to maintain lane. *King v. State*, 317 Ga. App. 834, 733 S.E.2d 21 (2012).

Evidence was insufficient to sustain a conviction. — Given that the trial court failed to provide the defendant with an opportunity to be heard regarding the trial court's decision to take judicial notice that the highway the defendant drove upon was a two-lane marked road, and no evidence was presented to establish that the highway was divided into two or more clearly marked lanes for traffic, there was insufficient evidence to convict the defendant of a failure to maintain a lane. *Stewart v. State*, 288 Ga. App. 735, 655 S.E.2d 328 (2007).

Evidence was insufficient to sustain the defendant's conviction for failure to maintain a lane in violation of O.C.G.A. § 40-6-48(1) because the state failed to present any witness testimony pertaining to the charge, and instead relied solely upon a videotape depicting the defendant's operation of the vehicle immediately prior to the traffic stop; the videotape failed to show where defendant's vehicle crossed into the adjacent lane of traffic. *Waters v. State*, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

Instructions. — Reversal of defendant's conviction for improper lane change was required since the trial court first instructed the jury by reading the language of the accusation charging the defendant with an improper lane change in violation of O.C.G.A. § 40-6-48, then later read O.C.G.A. § 40-6-123(b) and told the jury that the defendant was charged with improper lane change in violation of that section. *Threatt v. State*, 240 Ga. App. 592, 524 S.E.2d 276 (1999).

When the defendant was charged with failing to maintain defendant's lane in violation of O.C.G.A. § 40-6-48 and failing to use a turn signal in violation of

O.C.G.A. § 40-6-123, the trial court properly instructed the jury as to the definition of the standard for strict liability offenses because the state was not required to prove mental fault or mens rea in those offenses; although O.C.G.A. § 40-6-10(b) required proof that the defendant knowingly operated the vehicle with no insurance, and O.C.G.A. § 40-6-270 required proof that the defendant knowingly failed to stop and comply with the statute's mandates, the trial court's charge on intent was found sufficient. *Augustin v. State*, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Because the accusation read to the jury charged an improper lane change, but the jury was twice instructed on the elements of failure to maintain a lane, these inconsistent instructions required reversal of the defendant's improper lane change conviction. *Walker v. State*, 280 Ga. App. 393, 634 S.E.2d 177 (2006).

In a prosecution for driving under the influence and making an improper lane change, because the defendant did not request instructions on accident and justification, the trial court did not err in failing to give those instructions; moreover, because the jury was charged on involuntary intoxication, the failure to charge on accident was not harmful as a matter of law. *Walker v. State*, 280 Ga. App. 393, 634 S.E.2d 177 (2006).

Because there was some evidence, even from the state's witnesses, that showed that the defendant committed an act of following too closely, a traffic violation other than the more culpable offense of DUI, that such evidence not only showed that the defendant committed the less-culpable offenses of following too closely and of failing to maintain the defendant's lane, that may have caused the collision and resulting death, the trial court erred in failing to give the defendant's written request for an instruction on second-degree vehicular homicide. *Brown v. State*, 287 Ga. App. 755, 652 S.E.2d 631 (2007).

Trial court did not err by refusing to give the defendant's requested charge on misfortune or accident because the defendant, who was charged with driving under the influence, reckless driving, and failure to maintain lane, was not entitled to a

charge that the accident was unavoidable; because the defendant did not admit to committing any act that constituted the offenses with which the defendant was charged, the defendant was not entitled to an instruction on accident. *Davis v. State*, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

Cited in *Jenkins v. Lampkin*, 145 Ga. App. 746, 244 S.E.2d 895 (1978); *Mathews v. Taylor*, 155 Ga. App. 2, 270 S.E.2d 247 (1980); *Griffin v. State*, 191 Ga. App. 302, 381 S.E.2d 562 (1989); *Allenbrand v. State*, 217 Ga. App. 609, 458 S.E.2d 382 (1995); *State v. Holcomb*, 219 Ga. App. 231, 464 S.E.2d 651 (1995); *Hitchcock v. McPhail*, 221 Ga. App. 299, 471 S.E.2d 256 (1996); *Stepic v. State*, 226 Ga. App. 734, 487 S.E.2d 643 (1997); *Hamilton v. State*, 228 Ga. App. 285, 491 S.E.2d 485 (1997); *State v. Bowen*, 231 Ga. App. 95, 498 S.E.2d 570 (1998); *Forsman v. State*, 239 Ga. App. 612, 521 S.E.2d 410 (1999); *State v. Hanson*, 243 Ga. App. 532, 532

S.E.2d 715 (2000); *Moore v. Pitt-DesMoines, Inc.*, 245 Ga. App. 676, 538 S.E.2d 155 (2000); *In the Interest of W.N.J.*, 268 Ga. App. 637, 602 S.E.2d 173 (2004); *Smith v. State*, 270 Ga. App. 759, 608 S.E.2d 35 (2004); *Dunbar v. State*, 283 Ga. App. 872, 643 S.E.2d 292 (2007); *Davis v. State*, 286 Ga. App. 443, 649 S.E.2d 568 (2007); *Trull v. State*, 286 Ga. App. 441, 649 S.E.2d 571 (2007); *Lopez v. State*, 286 Ga. App. 873, 650 S.E.2d 430 (2007); *Merritt v. State*, 288 Ga. App. 89, 653 S.E.2d 368 (2007); *Brantley v. State*, 290 Ga. App. 764, 660 S.E.2d 846 (2008); *Thomas v. State*, 294 Ga. App. 108, 668 S.E.2d 540 (2008); *Eason v. Dozier*, 298 Ga. App. 65, 679 S.E.2d 89 (2009); *Johnson v. State*, 300 Ga. App. 605, 685 S.E.2d 339 (2009); *Jones v. State*, 319 Ga. App. 678, 738 S.E.2d 130 (2013); *State v. Zeth*, 320 Ga. App. 140, 739 S.E.2d 443 (2013); *Smith v. State*, 324 Ga. App. 100, 749 S.E.2d 395 (2013); *Plemmons v. State*, 755 S.E.2d 205, 2014 Ga. App. LEXIS 69 (2014).

RESEARCH REFERENCES

ALR. — Negligence of motorist colliding with vehicle approaching in wrong lane, 47 ALR2d 6.

Negligence of motorist as to injury or damage occasioned in avoiding collision

with vehicle approaching in wrong lane, 47 ALR2d 119.

Applicability of *res ipsa loquitur* doctrine where motor vehicle leaves road, 79 ALR2d 6.

40-6-49. Following too closely.

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any motor vehicle which is drawing another vehicle when traveling upon a roadway outside of a business or residential district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) Motor vehicles being driven upon any roadway outside of a business or residential district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient

space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This subsection shall not apply to funeral processions, parades, or other groups of vehicles if such groups of vehicles are under the supervision and control of a law enforcement agency.

(d) Vehicles which approach from the rear any other vehicle or vehicles stopped or slowed to make a lawful turn shall be deemed to be following for purposes of this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 63; Code 1933, § 68A-310, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-1641 are included in the annotations for this Code section.

No absolute duty to avoid collision. — No provision of law places an absolute duty on any driver to avoid a collision. All the circumstances and conditions at the time and place, including the conduct of other drivers, must be taken into account. *Flanigan v. Reville*, 107 Ga. App. 382, 130 S.E.2d 258 (1963) (decided under former Code 1933, § 68-1641).

No provision of law places an absolute duty on any driver to avoid a collision. *Malcom v. Malcolm*, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under former Code 1933, § 68-1641).

"Following" within meaning of subsection (d). — An approaching vehicle is "following" the leading vehicle for purposes of O.C.G.A. § 40-6-49(d) only where the leading vehicle has stopped or slowed to make a lawful turn. *Wilhelm v. Atlanta Gas Light Co.*, 190 Ga. App. 869, 380 S.E.2d 276, cert. denied, 190 Ga. App. 899, 380 S.E.2d 276 (1989).

Following too closely violation of laws. — Following too closely, without due regard for the speed of vehicles ahead and the traffic on and condition of the highway, is a violation of the Georgia motor vehicle laws. *Wallace v. Yarbrough*, 155 Ga. App. 184, 270 S.E.2d 357 (1980) (decided under former Code 1933, § 68-1641).

In a negligence action, whether a driver cited with following too closely was acting

with criminal negligence or intent was a question for the jury to decide for purposes of tolling the limitations period governing the cause of action. *Beneke v. Parker*, 293 Ga. App. 186, 667 S.E.2d 97 (2008), aff'd in part, rev'd in part, 285 Ga. 733, 684 S.E.2d 243 (2009).

No right to assume road clear. — Driver has no right to assume that road ahead of the driver is clear of traffic and it is the driver's duty to maintain a diligent lookout ahead. *Wallace v. Yarbrough*, 155 Ga. App. 184, 270 S.E.2d 357 (1980) (decided under former Code 1933, § 68-1641).

Provisions furnish general rule of driving conduct. — Trial court did not err in instructing the jury that former Code 1933, § 68A-310 (see O.C.G.A. § 40-6-49) and former Code 1933, § 68A-801 (see O.C.G.A. § 40-6-180) did not define precisely what constituted following too closely or driving at a prudent speed, and merely furnished a general rule of conduct. *Forehand v. Pace*, 146 Ga. App. 682, 247 S.E.2d 192 (1978) (decided under former Code 1933, § 68-1641).

Violation as basis for traffic stop. — Trial court's denial of a defendant's motion to suppress the evidence of drugs found in the defendant's vehicle was upheld. The stop of the defendant's vehicle was not pretextual in that two officers observed the defendant's vehicle with tinted windows and following another vehicle too closely, which provided a sufficient legal basis to effectuate the traffic stop. *Pollack v. State*, 294 Ga. App. 400, 670 S.E.2d 165 (2008).

There was no Fourth Amendment violation in an officer's search of the defendant's car because the officer executed a traffic stop after seeing the defendant follow another vehicle too closely, and the officer's request for consent-which occurred during pending computer check on the defendant's name-did not result from an unduly prolonged detention. Defendant's consent to search was thus valid. *Proctor v. State*, 298 Ga. App. 388, 680 S.E.2d 493 (2009).

When cocaine was found during a traffic stop after a dog sniff, suppression was not warranted, because the officer had probable cause to believe that the car was following too closely since it was not "contrary to the laws of nature" that a car traveling slower than the flow of traffic could position itself very closely to another car just after changing lanes. *United States v. Whitlock*, No. 12-10989, 2012 U.S. App. LEXIS 21853 (11th Cir. Oct. 19, 2012) (Unpublished).

Investigative stop held proper. — Trial court did not err in denying the defendant's motion to suppress cocaine found during a search of the defendant's car as the officer's testimony authorized a finding that the officer saw the defendant committing traffic violations for which the defendant received either a warning or a citation — impeding traffic, in violation of O.C.G.A. § 40-6-184(a), and following too closely, in violation of O.C.G.A. § 40-6-49. *Warren v. State*, 314 Ga. App. 477, 724 S.E.2d 404 (2012), cert. denied, No. S12C1072, 2012 Ga. LEXIS 548 (Ga. 2012).

Leading vehicle has no absolute superior legal position. — All drivers of vehicles using the highways are held to the exercise of due care; a leading vehicle has no absolute legal position superior to that of one following and each driver must exercise ordinary care in the situation in which that driver finds oneself. *Malcom v. Malcolm*, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under former Code 1933, § 68-1641); *Lynch v. Broom*, 158 Ga. App. 52, 279 S.E.2d 302 (1981), overruled on other grounds, *Chadwick v. Miller*, 169 Ga. App. 338, 312 S.E.2d 835 (1983) (decided under former Code 1933, § 68-1641).

Duties of leading and following vehicles. — Driver of the leading vehicle must exercise ordinary care not to stop, slow up, or swerve from the driver's course without adequate warning to following vehicles of the driver's intention so to do; the driver of the following vehicle, in the driver's turn, must exercise ordinary care to avoid collision with vehicles, both those in front and those behind the driver. *Lynch v. Broom*, 158 Ga. App. 52, 279 S.E.2d 302 (1981), overruled on other grounds, *Chadwick v. Miller*, 169 Ga. App. 338, 312 S.E.2d 835 (1983) (decided under former Code 1933, § 68-1641).

Jury determines whether section violated. — Former Code 1933, § 68-1641 merely furnished a general rule of conduct, and it is for the jury to determine, in the light of all the attendant circumstances of the case, whether that section had been violated. *Malcom v. Malcolm*, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under former Code 1933, § 68-1641).

Whether or not a driver was following too closely when the driver struck the other vehicle was clearly a jury question. *White v. Cline*, 174 Ga. App. 448, 330 S.E.2d 386 (1985).

Jury decides questions as to due care. — Just how close to a vehicle in the lead a following vehicle ought, in the exercise of ordinary care, to be driven, just what precautions a driver of such a vehicle must, in the exercise of ordinary care, take to avoid colliding with a leading vehicle which slows, stops, or swerves in front of that driver, just what signals or warnings the driver of a leading vehicle must, in the exercise of due care, give before stopping or slowing up of the driver's intention to do so, may not be laid down in any hard and fast or general rule; in each case except when reasonable minds may not differ, what due care is required, and whether due care was exercised, is for the jury. *Lynch v. Broom*, 158 Ga. App. 52, 279 S.E.2d 302 (1981), overruled on other grounds, *Chadwick v. Miller*, 169 Ga. App. 338, 312 S.E.2d 835 (1983) (decided under former Code 1933, § 68-1641).

Jury allowed to infer. — When there was some evidence from which the jury

was authorized to infer that the deceased was stopped to make a lawful left turn into a southbound lane of the highway, when the defendant approached the deceased's car from behind, the court did not err by charging O.C.G.A. § 40-6-49. *Branch v. Maxwell*, 203 Ga. App. 553, 417 S.E.2d 176, cert. denied, 203 Ga. App. 905, 417 S.E.2d 176 (1992).

Guilty plea not conclusive that defendant negligent. — Plea of guilty in traffic court to the charge of following too closely is only a circumstance to be considered along with all the other evidence in the civil action for damages, and is not conclusive of the fact that the defendant was negligent. *Malcom v. Malcolm*, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under former Code 1933, § 68-1641).

An admission to the traffic offense of following too closely does not conclusively show liability; it is only a circumstance for the jury to consider with all the other evidence in a civil action for damages. *Armandroff v. Cushing*, 250 Ga. App. 105, 550 S.E.2d 674 (2001).

Finding of ordinary negligence must first be made. — While a violation of former Code 1933, § 68-1641 has been called negligence per se, before a negligent act can be found to be negligence per se, a finding of ordinary negligence must in reality first be made. *Dowis v. McCurdy*, 109 Ga. App. 488, 136 S.E.2d 389, cert. dismissed, 220 Ga. 415, 139 S.E.2d 294 (1964) (decided under former Code 1933, § 68-1641).

Evidence insufficient for conviction. — After the defendant noticed a tractor trailer diagonally to the defendant's front and left swerve into the defendant's path of travel and, to avoid a collision the defendant swung the defendant's vehicle into the far left lane and struck the rear of a dump truck, the evidence was insufficient to support a conviction on the charge of following too closely since the defendant had not been in the same lane as the dump truck. *Torrance v. State*, 217 Ga. App. 562, 458 S.E.2d 495 (1995).

Trial court properly denied the plaintiffs' JNOV motion pursuant to O.C.G.A. § 9-11-50 in an action arising from an auto accident; a driver did not admit lia-

bility, the relevant facts were disputed, and the fact that the driver was unable to stop in time to avoid the collision did not demand a finding that the driver was following too closely in violation of O.C.G.A. § 40-6-49. *Cameron v. Peterson*, 264 Ga. App. 1, 589 S.E.2d 834 (2003).

Evidence sufficient for conviction. — Evidence was sufficient to support the defendant's conviction for following too closely after the defendant rear-ended a car at four o'clock in the morning and witnesses smelled alcohol on the defendant's breath and observed the defendant's red eyes and slurred speech at the accident scene and later at a hospital. *Belyeu v. State*, 262 Ga. App. 682, 586 S.E.2d 396 (2003).

Evidence supported a conviction of following another vehicle too closely after an officer observed the defendant driving "right on the tail" of another car on an interstate highway, traveling approximately 70 m.p.h. and, at times, only five feet from the car in front of the driver. *Totino v. State*, 266 Ga. App. 265, 596 S.E.2d 749 (2004).

Motorist's identification of the defendant as the driver of a pick-up truck that hit the motorist's vehicle and then drove away was sufficient under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) to establish the defendant's identity for purposes of defendant's conviction for leaving the scene of an accident and following too closely in violation of O.C.G.A. §§ 40-6-49 and 40-6-270(a)(1). *Craig v. State*, 276 Ga. App. 329, 623 S.E.2d 518 (2005).

Evidence was sufficient to support defendant's conviction for following too closely as an officer described the traffic conditions on the interstate and the length of the space the defendant was leaving between the defendant's truck and the truck ahead of the defendant; the officer also testified that a video recording of the defendant's stop shown to the jury demonstrated the traffic conditions; viewed in a light to favor the verdict, the evidence authorized the jury to find beyond a reasonable doubt that the defendant had followed the lead truck more closely than was reasonable and prudent in light of the speed of the vehicles and

traffic conditions. *Buckholts v. State*, 283 Ga. App. 254, 641 S.E.2d 246 (2007).

Evidence adduced at trial was sufficient to authorize the jury to find the defendant guilty of violating O.C.G.A. § 40-6-49 beyond a reasonable doubt because the defendant rear-ended a car and left the scene without providing the victim with any identifying information. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Instructions. — Because there was some evidence, even from the state’s witnesses, that showed that the defendant committed an act of following too closely, a traffic violation other than the more culpable offense of DUI, that such evidence not only showed that the defendant committed the less-culpable offenses of following too closely and of failing to maintain the defendant’s lane, that may have caused the collision and resulting death, the trial court erred in failing to give the defendant’s written request for an instruction on second-degree vehicular homicide. *Brown v. State*, 287 Ga. App. 755, 652 S.E.2d 631 (2007).

Trial court distinguished between the counts charging the defendant with violating O.C.G.A. §§ 40-6-49(d) and 40-6-270 because the trial court fairly instructed the jurors that knowledge was an element of the hit-and-run count. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Comma inadvertently added to the state’s requested charge on O.C.G.A. § 40-6-49(d) was harmless because the trial court read the charges aloud and the jury did not see the written charge. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Trial court did not err in charging the jury on O.C.G.A. § 40-6-49(a) because the trial court charged the jury and then explained the term “following” by the court’s charge on § 40-6-49(d); there was no variance between the accusation and the proof at trial on the count charging the defendant with violating § 40-6-49. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Cited in *Peluso v. State*, 147 Ga. App. 266, 248 S.E.2d 546 (1978); *Avant Trucking Co. v. Stallion*, 159 Ga. App. 198, 283 S.E.2d 7 (1981); *U-Haul Co. v. Ford*, 171 Ga. App. 744, 320 S.E.2d 868 (1984); *United States v. Bates*, 840 F.2d 858 (11th Cir. 1988); *Johnstone v. Malone Office Equip. Co.*, 192 Ga. App. 137, 384 S.E.2d 208 (1989); *Tam v. State*, 225 Ga. App. 101, 483 S.E.2d 142 (1997); *Furlong v. Dyal*, 246 Ga. App. 122, 539 S.E.2d 836 (2000); *Rucker v. State*, 266 Ga. App. 293, 596 S.E.2d 639 (2004); *Smith v. State*, 270 Ga. App. 759, 608 S.E.2d 35 (2004); *Roberts v. State*, 280 Ga. App. 672, 634 S.E.2d 790 (2006); *Garcia-Carrillo v. State*, 322 Ga. App. 439, 746 S.E.2d 137 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, § 246.

C.J.S. — 60A C.J.S., *Motor Vehicles*, § 736.

ALR. — *Construction and application of statutes regulating or forbidding passing on hill by vehicle*, 60 ALR2d 211.

Driver’s failure to maintain proper distance from motor vehicle ahead, 85 ALR2d 613.

Automobiles: sudden emergency as exception to rule requiring motorist to maintain ability to stop within assured clear distance ahead, 75 ALR3d 327.

40-6-50. Driving on divided highway, controlled-access roadways, and emergency lanes.

(a) As used in this Code section, the term “gore” means the area of convergence between two lanes of traffic.

(b) Every vehicle driven on a divided highway shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across, or within any dividing space, barrier, gore, paved shoulder, or section separating the roadways of a divided highway; except that a vehicle may be driven through an opening in such physical barrier or dividing space or at an established crossover or intersection unless specifically prohibited by an official sign, signal, or control device. No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority. Except as provided for in subsection (c) of this Code section, no vehicle shall be driven in an emergency lane except in the event of an actual emergency.

(c) For purposes of this subsection, "transit bus" means a bus used for the transportation of passengers within a system which is operated by or under contract to the state, a public agency or authority, or a county or municipality of this state. If the commissioner of transportation permits the use of emergency lanes of a controlled-access roadway by transit buses in the metropolitan Atlanta nonattainment area, the commissioner shall designate on which controlled-access roadways the use of emergency lanes by transit buses may be allowed and upon such designation the commissioner shall only permit the use on that emergency lane of a transit bus with a seating capacity of 33 passengers or more. Transit buses authorized to use the emergency lanes under this subsection may be operated on the emergency lane only when main lane traffic speeds are less than 35 miles per hour. Drivers of transit buses being operated on the emergency lanes may not exceed the speed of the main lane traffic by more than 15 miles per hour and may never exceed 35 miles per hour. Drivers of transit buses being operated on the emergency lanes must yield to merging, entering, and exiting traffic and must yield to other vehicles on the emergency lanes. Transit buses operating on the emergency lanes must be registered with the Department of Transportation.

(d) Nothing in this Code section shall prohibit the use of a FlexAuto lane in the manner permitted under Code Section 32-9-4.1. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 64; Ga. L. 1963, p. 254, § 4; Code 1933, §§ 68A-311, 68A-312, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, §§ 40-6-50, 40-6-51; Ga. L. 1990, p. 2048, § 5; Ga. L. 2003, p. 329, § 1; Ga. L. 2005, p. 684, § 3/HB 273.)

Cross references. — Construction and regulation of limited-access roads generally, § 32-6-110 et seq.

Editor's notes. — Ga. L. 2005, p. 684, § 1/HB 273, not codified by the General Assembly, provides; "The General Assem-

bly finds and determines and recommends as follows:

"(1) The Georgia Department of Transportation has a job of overwhelming proportions and addresses the ever-increasing transportation needs of the state through

the hard work and dedication of outstanding leaders and staff;

“(2) There is a need in this state to reduce emissions and improve air quality by increasing traffic flow and reducing traffic congestion and decreasing drive times;

“(3) The Department of Transportation is urged to use creative and innovative methods to deal with gridlock and traffic congestion in Georgia and especially in the metropolitan areas;

“(4) Upon passage of this enabling legislation, the department is urged to implement FlexAuto lanes where applicable and to commence the implementation of such lanes in as timely a manner as is practicable;

“(5) The Department of Transportation

is requested specifically to identify 20 major areas with a history of traffic congestion in and around our state that will derive the most benefit from the use of FlexAuto lanes and, after identifying these areas, to create and rapidly implement a plan for use of such lanes in such areas;

“(6) Studies and construction models used successfully in other areas within this country and others should be used as models where traffic flow was improved and emissions reduced by using creative and innovative methods to deal with gridlock and traffic congestion; and

“(7) The model used in Virginia is being studied by Israel, France, Japan, Germany, and England.”

JUDICIAL DECISIONS

Emergency lanes. — Because “emergency lane” has a meaning commonly understood by drivers following the rules of the road in Georgia, the term “emergency lane” as used in statutes is sufficiently definite to meet constitutional standards. *Payne v. State*, 275 Ga. 181, 563 S.E.2d 844 (2002).

Because a truck driver witnessed an accident on a highway in which two vehicles veered off the road into a ravine

presented an emergency, the truck driver’s act of stopping in an emergency lane to run into the ravine to provide assistance was in compliance with O.C.G.A. § 40-6-50(b), and not in violation of O.C.G.A. § 40-6-203. *Reid v. Midwest Transp.*, 270 Ga. App. 557, 607 S.E.2d 170 (2004).

Cited in *Merritt v. State*, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 245.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 654.

ALR. — Automobile accidents on street or highway divided by parkway or other neutral strip, 165 ALR 1418.

Automobiles: accidents arising from merger of traffic on limited-access highway with that from service road or ramp, 40 ALR3d 1429.

40-6-51. Further restrictions on use of controlled-access roadways.

(a)(1) Any motor vehicle with more than six wheels and commercial motor vehicles as defined by Code Section 40-1-1 shall not travel on any portions of Interstates 20, 75, 85 or Georgia Highway 400 that are located within the arc of Interstate 285 unless the driver of such motor vehicle is:

(A) Engaging in a pick up or delivery to or from a shipper located inside the arc of Interstate 285;

(B) Traveling to or from such motor vehicle's terminal facility located inside the arc of Interstate 285;

(C) Traveling to or from a repair facility located inside the arc of Interstate 285 for service; or

(D) Traveling to or from his or her residence which is located inside the arc of Interstate 285.

(2) The Department of Transportation by order and local authorities by ordinance may regulate or prohibit the use of any controlled-access roadway within their respective jurisdictions by any class of vehicle or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(b) The Department of Transportation or the local authority adopting any such prohibition shall erect and maintain official traffic-control devices on the controlled-access highway on which such prohibitions are applicable, and when such devices are in place no person shall disobey the restrictions stated thereon.

(c) For purposes of this Code section, roadways within the jurisdiction of the Department of Transportation and roadways within the jurisdiction of local authorities shall be as set forth in Code Section 32-4-1.

(d) A driver of a motor vehicle failing to comply with the requirements of subsection (a) of this Code section shall be fined \$150.00. A driver of a motor vehicle failing to comply with subsection (a) of this Code section during a declared state of emergency for inclement weather conditions shall be fined \$1,000.00. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 65; Ga. L. 1963, p. 254, § 3; Code 1933, § 68A-313, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-52; Code 1981, § 40-6-51, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2014, p. 745, § 9/HB 877; Ga. L. 2014, p. 807, § 3/HB 753.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, inserted "of vehicle" in the middle of subsection (a) (now paragraph (a)(2)). The second 2014 amendment, effective July 1, 2014, added paragraph (a)(1); redesignated

former subsection (a) as present paragraph (a)(2); and added subsection (d).

Cross references. — Construction and regulation of limited-access roads generally, § 32-6-110 et seq.

JUDICIAL DECISIONS

Cited in *Duke Trucking Co. v. Giles*, 185 Ga. App. 833, 366 S.E.2d 216 (1988).

RESEARCH REFERENCES

ALR. — Automobiles: accidents arising highway with that from service road or from merger of traffic on limited-access ramp, 40 ALR3d 1429.

40-6-52. Trucks using multilane highways.

(a) As used in this Code section, the term “truck” means any vehicle equipped with more than six wheels, except buses and motorcoaches.

(b) On roads, streets, or highways with three or more lanes allowing for movement in the same direction, it shall be unlawful for any truck to operate in any lanes other than the two most right-hand lanes, except when the truck is preparing for a left turn or as otherwise provided by subsection (d) of this Code section.

(c) On roads, streets, or highways with two lanes allowing for movement in the same direction, it shall be unlawful for any truck to operate in the left-hand lane, except when the truck is actually overtaking and passing another vehicle, preparing for a left turn, or as otherwise provided by subsection (d) of this Code section.

(d) On interstate highways with four or more lanes allowing for movement in the same direction, the Department of Transportation may designate specific lanes that either prohibit or allow trucks. Where truck usage has been so designated and indicated as such by signs erected by the Department of Transportation, it shall be unlawful for any truck to operate in any lanes other than as designated. (Code 1981, § 40-6-53, enacted by Ga. L. 1987, p. 361, § 1; Code 1981, § 40-6-52, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2001, p. 1050, § 1; Ga. L. 2004, p. 746, § 2.)

Cross references. — Impeding traffic flow in left-hand lane on multi-lane highways, § 40-6-184.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 224 (2001).

JUDICIAL DECISIONS

Cited in Massie v. Ross, 211 Ga. App. 354, 439 S.E.2d 3 (1993).

40-6-53. Operation of buses and motorcoaches in left-hand lanes.

(a) On roads, streets, or highways with three or more lanes allowing for movement in the same direction, it shall be unlawful for any bus or motorcoach to operate in any lanes other than the two most right-hand lanes, except when the bus or motorcoach is preparing for a left turn, is moving to or from an HOV lane, or as otherwise provided by subsection (c) of this Code section.

(b) On roads, streets, or highways with two lanes allowing for movement in the same direction, it shall be unlawful for any bus or motorcoach to operate in the left-hand lane, except when the bus or motorcoach is actually overtaking and passing another vehicle, preparing for a left turn, or as otherwise provided by subsection (c) of this Code section.

(c) On interstate highways with four or more lanes allowing for movement in the same direction, the Department of Transportation may designate specific lanes that either prohibit or allow buses or motorcoaches. Where such usage has been so designated and indicated by signs erected by the Department of Transportation, it shall be unlawful for any bus or motorcoach to operate in any lanes other than those designated for its use except when moving to or from an HOV lane.

(d) When moving to or from an HOV lane, a bus or motorcoach shall move to the proper lanes of travel expeditiously and in the shortest distance possible under the circumstances. (Code 1981, § 40-6-53, enacted by Ga. L. 2004, p. 746, § 3.)

Editor's notes. — Ga. L. 1990, p. 2048, § 5, redesignated former Code Section 40-6-53 as present Code Section 40-6-52.

40-6-54. Designation of travel lanes for exclusive use of certain vehicles; penalty; presumption that owner committed violation; establishment of high occupancy toll lanes.

(a) The Department of Transportation may designate travel lanes on any road in the state highway system for the exclusive use of certain vehicles, as provided in Code Section 32-9-4; provided, however, that where such designation has been made, the road shall be appropriately marked with signs or other roadway markers or markings to inform the traveling public of the restrictions imposed.

(b) Any person who violates subsection (b) of Code Section 32-9-4 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine:

- (1) Not to exceed \$75.00 for the first such offense;
- (2) Not to exceed \$100.00 for the second such offense;
- (3) Not to exceed \$150.00 for the third such offense; and
- (4) Not to exceed \$150.00 plus one point on such person's driver's license as provided for under Code Section 40-5-57 for the fourth or subsequent offense.

(c) In the prosecution of an offense committed in the presence of or witnessed by a law enforcement officer whether by direct observation or

as recorded through means of video surveillance, either by magnetic imaging or photographic copy, of failure to obey a road sign restricting a highway or portion thereof to the use of high occupancy vehicles (HOV), proof that the vehicle described in the HOV violation summons was operated in violation of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute evidence as a rebuttable presumption that such registered owner of the vehicle was the person committing the violation. Notwithstanding any other provision of this subsection to the contrary, said rebuttable presumption shall be overcome if the owner of said vehicle states, under oath, in open court, that he or she was not the operator of the vehicle at the time the alleged offense occurred.

(d) The General Assembly finds and declares that the development, improvement, and use of exclusive or preferential high occupancy vehicle lanes, emergency vehicle lanes, and truck lanes or routes should be undertaken in order to relieve congestion and increase the efficiency of the federal-aid highway system. The Department of Transportation in cooperation with the State Road and Tollway Authority is hereby authorized to implement high occupancy toll (HOT) lanes where appropriate in qualifying HOV lanes. A "HOT lane" is a designated lane which allows single occupancy vehicles to gain access to HOV lanes by paying a toll set by the State Road and Tollway Authority. The department may design and develop a system of HOT lanes which uses value pricing and lane management. "Value pricing" recognizes the need to vary the road user charge according to the levels of congestion and time of day; and "lane management" restricts access to the designated HOT lanes based on occupancy, vehicle type, or other objective which would maximize the efficiency of the federal-aid highway system. (Code 1981, § 40-6-54, enacted by Ga. L. 1993, p. 363, § 2; Ga. L. 2004, p. 746, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "of this subsection" was substituted for "of this paragraph" in the last sentence of subsection (c).

40-6-55. Obligation of drivers to yield to bicyclist.

Notwithstanding other provisions of this chapter relating to operating a vehicle on a roadway, where a bicycle lane is provided on the roadway, the operator of a motor vehicle shall yield to a person operating a bicycle in a bicycle lane. (Code 1981, § 40-6-55, enacted by Ga. L. 2011, p. 426, § 2/HB 101.)

Administrative rules and regulations. — Penalties for Violations of Uniform Rules of the Road, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Rule 375-3-3-.01.

40-6-56. Safe distance defined; application to bicyclist.

(a) As used in this Code section, the term "safe distance" means not less than three feet.

(b) Notwithstanding any provision of this article to the contrary, when feasible, the operator of a motor vehicle, when overtaking and passing a bicycle that is proceeding in the same direction on the roadway, shall leave a safe distance between such vehicle and the bicycle and shall maintain such clearance until safely past the overtaken bicycle. (Code 1981, § 40-6-56, enacted by Ga. L. 2011, p. 426, § 2/HB 101.)

Administrative rules and regulations. — Penalties for Violations of Uniform Rules of the Road, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Department of Driver Services, Rule 375-3-3-.01.

ARTICLE 4**RIGHT OF WAY****JUDICIAL DECISIONS**

Cited in *Rigdon v. Williams*, 132 Ga. App. 176, 207 S.E.2d 591 (1974).

RESEARCH REFERENCES

ALR. — Driving automobile across track in front of streetcar that has stopped to take on or let off passengers as negligence or contributory negligence, 14 ALR 811.

Duty and liability to persons struck by automobile while crossing street at unusual place, or diagonally, 14 ALR 1176; 67 ALR 313.

Applicability of motor vehicle regulations to public officials or employees, 19 ALR 459; 23 ALR 418.

Right of way at street or highway inter-

sections as dependent upon, or independent of, care or negligence, 89 ALR 838; 136 ALR 1497.

Right of way as between vehicles as affected by relative distances or time of reaching intersection, 175 ALR 1013.

Rights, duties, and liability with respect to narrow bridge or passage as between motor vehicles approaching from opposite directions, 47 ALR2d 142.

Custom or practice of drivers of motor vehicles as affecting question of negligence, 77 ALR2d 1327.

40-6-70. Vehicles approaching or entering intersection.

(a) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, provided that when a vehicle approaches or enters an intersection with no stop signs or other traffic-control devices from a highway that terminates at the intersection, the driver of that vehicle shall yield the right of way to the other vehicle, whether the latter vehicle be on such

driver's right or left. When two vehicles approach or enter an intersection with an inoperative traffic light, the driver of each vehicle shall be required to stop in the same manner as if a stop sign were facing in each direction at the intersection. Drivers shall not be required to stop if the traffic signal is properly signed as a pedestrian hybrid beacon or ramp meter and operating in the unactivated dark mode. When a flashing indication is given, the driver shall stop for the flashing red signal and exhibit caution while passing through a flashing yellow indication.

(b) The right of way rule declared in subsection (a) of this Code section is modified at through highways and otherwise as stated in this chapter. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 72; Ga. L. 1966, p. 183, § 5; Code 1933, § 68A-401, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 904, § 1; Ga. L. 2010, p. 442, § 5/HB 1174; Ga. L. 2014, p. 851, § 7/HB 774.)

The 2014 amendment, effective July 1, 2014, inserted "or ramp meter" in the next-to-last sentence of subsection (a).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1989, the hyphens between the words "right of way" in subsection (b) were deleted.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this Code section.

DOT granted summary judgment in personal injury action. — Trial court properly granted summary judgment to the Georgia Department of Transportation in a personal injury suit alleging the department negligently designed, maintained, and failed to provide proper traffic control devices at an intersection because the undisputed evidence showed that the clearly visible stop signs at the intersection were ignored by one driver, who was the proximate cause of the accident and the injuries. *Bennett v. Ga. DOT*, 318 Ga. App. 369, 734 S.E.2d 77 (2012).

One who has the right-of-way may assume that others will obey the rules of the road absent some factual indicia that such is not the case. *Morgan v. Braasch*, 214 Ga. App. 82, 446 S.E.2d 746 (1994).

Right of way at uncontrolled intersection. — Instruction that a person traveling on a subservient street has the burden of yielding when intersecting with a through street at an uncontrolled inter-

section was a correct statement of law. *Smith v. Hiawassee Hdwe. Co.*, 167 Ga. App. 70, 305 S.E.2d 805 (1983).

Law that person on subservient street must yield to traffic on through street at an uncontrolled intersection is applicable only where motorists approaching an unregulated intersection may discern that one of the roads is a major through street while the other road is subservient. *Lee v. Bartusek*, 205 Ga. App. 551, 422 S.E.2d 570 (1992).

Section applicable to inoperative traffic light. — An inoperative traffic light is to be treated as an unmarked intersection for purposes of O.C.G.A. § 40-6-70 and the trial court's refusal to charge the jury accordingly was reversible error. *Edmond v. Roberson*, 207 Ga. App. 101, 427 S.E.2d 74 (1993).

Jury instruction proper. — Jury instruction on the duty to yield right-of-way was proper after the evidence indicated that both vehicles involved in an accident approached the intersection at approximately the same time. *Cleveland v. Bryant*, 236 Ga. App. 459, 512 S.E.2d 360 (1999).

Jury instruction on right of way not proper. — Because the general right

of way rule set forth in O.C.G.A. § 40-6-70, applied when two drivers arrived simultaneously at an intersection controlled by four-way stop signs, the trial court erred in charging the jury that the rule did not apply in such circumstance. Given that the question of which driver had the right of way was central to the determination of negligence, the appellate court could not say that the trial court's erroneous instruction to the jury regarding right of way was harmless. *Graham v. Fallick*, 322 Ga. App. 525, 745 S.E.2d 747 (2013).

Former Code 1933, § 68-303 applied within the corporate limits. *Shipman v. Johnson*, 87 Ga. App. 538, 74 S.E.2d 557 (1953) (decided under former Code 1933, § 68-303).

Section applicable when driver on left should apprehend collision. — Former Code 1933, § 68-303 applied not only after the automobiles arrive at the intersection simultaneously or at practically the same time, but also when, under all the circumstances, including the distances and speeds of the two cars, the driver of the automobile on the left should reasonably apprehend that a collision will occur unless the driver yields the right of way. *Laseter v. Clark*, 54 Ga. App. 669, 189 S.E. 265 (1936) (decided under former Code 1933, § 68-303).

Rule that at an intersection the driver on the right shall have the right of way is not limited to two vehicles coming to an intersection simultaneously, or practically so, but is applicable to any situation where the distances between the two vehicles, their relative speeds, or any other circumstances show that the driver on the left should reasonably apprehend a collision would occur unless the driver yielded the right of way. *Essig v. Cheves*, 75 Ga. App. 870, 44 S.E.2d 712 (1947) (decided under former Code 1933, § 68-303).

Section inapplicable when vehicles moving in opposite directions. — Rule that the operator of a motor vehicle shall give the right of way to an operator approaching from the right on an intersecting highway is intended to avoid collision by automobiles whose proper courses would intersect or converge, and has no application where the vehicles are moving

in opposite directions. *Hollomon v. Hopson*, 45 Ga. App. 762, 166 S.E. 45 (1932) (decided under former Code 1933, § 68-303).

Negligence per se. — Violation of the provision providing that at the intersection of two highways the driver on the left should give the right of way to the driver on the right is negligence per se. *Laseter v. Clark*, 54 Ga. App. 669, 189 S.E. 265 (1936) (decided under former Code 1933, § 68-303).

Failure to yield right of way to one entitled to the right of way is negligence per se. *Shipman v. Johnson*, 87 Ga. App. 538, 74 S.E.2d 557 (1953) (decided under former Code 1933, § 68-303).

Driver of car having right of way must exercise ordinary care. — Driver of an automobile having the right of way at a highway intersection is not freed from all duty to exercise ordinary care, and the driver may not personally violate a speed statute or ordinance. *Laseter v. Clark*, 54 Ga. App. 669, 189 S.E. 265 (1936) (decided under former Code 1933, § 68-303).

Drivers' assumption that others will obey rules. — Driver having right of way may assume that others will obey rule of the road and will yield the right of way to that driver, and the driver has the right to proceed at a reasonable speed even though the driver sees another vehicle approaching. *Greene v. Helms*, 115 Ga. App. 447, 154 S.E.2d 892 (1967).

Sufficient evidence to find defendant drivers negligent. — Under an application of the rules of law to the facts, the jury was authorized to find from the evidence adduced upon the trial, and the reasonable inferences to be drawn therefrom that the defendant drivers were grossly negligent in causing the plaintiff's injuries. *Lawrence v. Hayes*, 92 Ga. App. 778, 90 S.E.2d 102 (1955).

Insufficient evidence of guilt. — Because the defendant was convicted under the wrong code section and because the trial court specifically found that the defendant was not the driver of the vehicle, the defendant's convictions for failure to yield while entering a roadway and causing an automobile accident in violation of O.C.G.A. § 40-6-70(a) were reversed. *Stone v. State*, 277 Ga. App. 847, 627 S.E.2d 890 (2006).

Cited in *Robbins v. Farmers & Merchants Bank*, 161 Ga. App. 53, 289 S.E.2d 288 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 286.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 53, 54, 56. 60A C.J.S., Motor Vehicles, § 846 et seq.

ALR. — Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Rights and duties at intersection of arterial (or other favored) highway and nonfavored highway, 58 ALR 1197; 81 ALR 185.

Right of way at street or highway intersections as dependent upon, or independent of, care or negligence, 89 ALR 838; 136 ALR 1497.

Right of way as between vehicles as affected by relative distances or time of reaching intersection, 175 ALR 1013.

Right and duty of motorist on through, favored, or arterial street or highway to proceed where lateral view at intersection is obstructed by physical obstacle, 59 ALR2d 1202.

Duty and liability of vehicle drivers approaching intersection of one-way street with other street, 62 ALR2d 275.

Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal, 74 ALR2d 242.

What is a street or highway intersection within traffic rules, 7 ALR3d 1204.

Automobiles: duty and liability with respect to giving audible signal at intersection, 21 ALR3d 268.

40-6-71. Vehicle turning left.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 73; Code 1933, § 68A-402, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Jury instructions upheld. — Instruction on O.C.G.A. § 40-6-21(a)(1)(A) (meaning of traffic signals), rather than O.C.G.A. § 40-6-71 (turning left), held proper. *Corley v. Harris*, 171 Ga. App. 688, 320 S.E.2d 833 (1984); *Bailey v. Barte*, 205 Ga. App. 463, 422 S.E.2d 319 (1992).

Opposing driver's testimony allowed the jury to consider whether the driver satisfied the driver's duty in looking and not seeing any oncoming vehicles such that the driver knew or should have known whether the suing driver's vehicle was so close so as to pose an immediate

hazard. *Dubberly v. Cooper*, 258 Ga. App. 193, 573 S.E.2d 442 (2002).

Requirements of accusation and ability to withstand demurrer. — Trial court erred in sustaining the defendant's demurrer regarding the charges of failing to yield the right of way while turning left and failing to obey a traffic-control device as an accusation that charges an accused with having committed certain acts in violation of a specified penal statute without a demurrer, and the indictment cited both O.C.G.A. §§ 40-6-20 and 40-6-71. Further, although the accusation

failed to put the defendant on notice of what instruction of a traffic-control device the state alleged the defendant failed to obey, the defendant could not admit that the defendant failed to yield the right of way to a vehicle when the defendant was intending to turn left within the specified intersection, which was regulated by traffic lights, without admitting to the offense of failure to obey a traffic-control device. *State v. Shabazz*, 291 Ga. App. 751, 662 S.E.2d 828 (2008).

Evidence sufficient for conviction. — See *Cook v. State*, 238 Ga. App. 341, 518 S.E.2d 749 (1999).

Payment of fine did not dispose of negligence action. — In a negligence action for damages sustained by a bicyclist allegedly caused by an oncoming driver, because the driver's payment of a fine on a failure to yield citation did not constitute an explicit admission of guilt or

amount to a finding of negligence per se, and because fact issues remained as to whether the bicyclist was contributorily negligent, partial summary judgment in the bicyclist's favor was reversed. *Hite v. Anderson*, 284 Ga. App. 156, 643 S.E.2d 550 (2007).

Inconsistent verdicts. — After the trial court accepted a guilty plea from the oncoming driver for running a red light and a guilty verdict was entered against the defendant for failing to yield the right of way, the fact that the two verdicts were inconsistent did not preclude the guilty verdict against the defendant. *Nolan v. State*, 257 Ga. App. 767, 572 S.E.2d 100 (2002).

Cited in *Thompson v. Hill*, 143 Ga. App. 272, 238 S.E.2d 271 (1977); *Johnson v. State*, 170 Ga. App. 433, 317 S.E.2d 213 (1984); *Branch v. State*, 175 Ga. App. 696, 334 S.E.2d 24 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 285.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 699 et seq., 864.

ALR. — Right of way at street or highway intersections, 47 ALR 595.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 47 ALR 703; 62 ALR 970; 104 ALR 485.

Automobiles: cutting corners as negligence, 115 ALR 1178.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 ALR2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 ALR2d 103.

Duty and liability of vehicle drivers approaching intersection of one-way street with other street, 62 ALR2d 275.

40-6-72. Stop signs and yield signs.

(a) Preferential right of way may be indicated by stop signs or yield signs as authorized in Code Section 32-6-50.

(b) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(c) The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. If such a driver is involved in a collision with a vehicle in the intersection after driving past a yield sign without stopping, such collision shall be deemed prima-facie evidence of his failure to yield the right of way. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 74; Code 1933, § 68A-403, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1939, p. 295 are included in the annotations for this Code section.

DOT without liability when stop sign present. — Trial court properly granted summary judgment to the Georgia Department of Transportation in a personal injury suit alleging the department negligently designed, maintained, and failed to provide proper traffic control devices at an intersection because the undisputed evidence showed that the clearly visible stop signs at the intersection were ignored by one driver, who was the proximate cause of the accident and the injuries. *Bennett v. Ga. DOT*, 318 Ga. App. 369, 734 S.E.2d 77 (2012).

Function of fixed red light. — Fixed red light is not traffic-control device; rather, it has same effect as stop sign, which requires a vehicle to stop and then proceed through the intersection only when it is safe to do so. *Andrews v. Buckner*, 143 Ga. App. 862, 240 S.E.2d 266 (1977).

Driver lawfully in lane. — Municipal court's finding that the driver who was hit improperly entered the intersection had no bearing on the defendant's guilt, although the defendant may have entered the intersection too soon, the evidence

established that at the time the defendant entered the intersection the defendant was lawfully in the lane and the driver who was hit was obligated to yield to the defendant. *Wilson v. City of Riverdale*, 203 Ga. App. 250, 416 S.E.2d 825 (1992), overruled on other grounds *Brown v. City of Marietta*, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

Entering safely into the intersection. — Driver of a vehicle on a roadway controlled by a stop sign may momentarily gain preference of right of way when, after coming to a complete stop at the stop sign and having diligently looked for oncoming traffic, enters safely into the intersection. *Flournoy v. Brown*, 226 Ga. App. 857, 487 S.E.2d 683 (1997).

Partial compliance inadequate. — Even if the defendant did manage to stop at a stop sign to let several cars go by, since the defendant failed to yield to victims when the victims were approaching an intersection on another roadway, the defendant was liable under O.C.G.A. § 40-6-72. *Moss v. State*, 209 Ga. App. 59, 432 S.E.2d 825 (1993).

Violation prima facie establishes negligence. — Operation of a bus in a manner which constituted a violation of former Code 1933, § 68A-403 prima facie established negligence per se in the absence of a valid defense. *Johnson v.*

McAfee, 151 Ga. App. 774, 261 S.E.2d 708 (1979) (see O.C.G.A. § 40-6-72).

Matters submitted to jury. — Existence of a stop sign though unofficial, and the failure of the plaintiff to heed the sign are relevant matters in a consideration of the diligence and negligence of the parties and such matters should be submitted to the jury. *Tyson v. Shoemaker*, 208 Ga. 28, 65 S.E.2d 163 (1951) (decided under Ga. L. 1939, p. 295).

Jury instruction upheld. — Instruction stating "that the defendant has no duty to yield the right of way if you find that the defendant, after stopping and looking, could not see the automobile in which the plaintiff was riding as the defendant entered the roadway" was a correct statement of law. *Humphreys v. Kipfmiller*, 237 Ga. App. 572, 515 S.E.2d 878 (1999).

Evidence sufficient. — Police officer's testimony that the officer observed the defendant run a stop sign that was "clearly visible" to oncoming traffic was sufficient to authorize the trial court's finding that the defendant was guilty, beyond a reasonable doubt, of disregarding a stop sign. *Evans v. State*, 235 Ga. App. 877, 510 S.E.2d 619 (1999).

Police officer's observation that the stop of the vehicle the defendant was driving was executed after the vehicle went through an intersection without stopping at a stop sign was sufficient to support defendant's conviction for disregarding a stop sign and the state did not have to prove that the intersection did not have a "marked stop line," "a crosswalk," or a "point nearest the intersecting roadway" as described in O.C.G.A. § 40-6-72. *Scott v. State*, 254 Ga. App. 728, 563 S.E.2d 554 (2002).

Evidence that the police observed the defendant running a stop sign just moments before the defendant engaged the police in a high-speed motor vehicle chase was sufficient to support the defendant's

conviction for failure to obey a stop sign. *Arnold v. State*, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Evidence supported a defendant's convictions for fleeing and attempting to elude a police officer as an underlying offense for felony murder, theft by taking, vehicular homicide, disregarding a traffic control device, failing to stop at a stop sign, and reckless driving as: (1) the defendant stole a vehicle and was spotted by an officer shortly after the vehicle was reported as stolen; (2) when the officer began to follow the vehicle, the vehicle rapidly accelerated; (3) the officer followed the stolen vehicle for several blocks, with both vehicles traveling between 60-70 miles per hour; (4) the vehicle continued to accelerate after the officer turned on the officer's blue lights and siren; (5) when the stolen vehicle ran a red light, the stolen vehicle struck a car, killing the driver; and (6) the officer and the owner of the stolen vehicle identified the defendant as the person driving the stolen vehicle. *Ferguson v. State*, 280 Ga. 893, 635 S.E.2d 144 (2006).

Appeals court found sufficient evidence to support the defendant's convictions for DUI to the degree of being a less-safe driver and of failing to stop at a stop sign as the evidence, although not overwhelming, showed that the defendant smelled of alcohol, had run a stop sign, and that the arresting officer believed that the defendant was a less-safe driver as a result of alcohol consumption. *Sistrunk v. State*, 287 Ga. App. 39, 651 S.E.2d 350 (2007).

Cited in *Holbrook Waterproofing Co. v. Cleaver*, 132 Ga. App. 24, 207 S.E.2d 562 (1974); *Jenkins v. Lampkin*, 145 Ga. App. 746, 244 S.E.2d 895 (1978); *Cannon v. Rithmire*, 156 Ga. App. 360, 274 S.E.2d 746 (1980); *Hensel v. Davis*, 170 Ga. App. 153, 316 S.E.2d 479 (1984); *DOT v. Jackson*, 229 Ga. App. 321, 494 S.E.2d 20 (1997); *Gilmore v. State*, 242 Ga. App. 470, 530 S.E.2d 221 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 239, 283, 291.

C.J.S. — 60A C.J.S., Motor Vehicles, § 837 et seq.

ALR. — Right of way at street or high-

way intersections, 37 ALR 493; 47 ALR 595.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 47 ALR 703; 62 ALR 970; 104 ALR 485.

Right and duty of motorist on through, favored, or arterial street or highway to proceed where lateral view at intersection is obstructed by physical obstacle, 59 ALR2d 1202.

Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal, 74 ALR2d 242.

Liability for automobile accident at intersection as affected by reliance upon or disregard of "yield" sign or signal, 2 ALR3d 275.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 ALR3d 180.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 ALR3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 ALR3d 557.

What is a street or highway intersection within traffic rules, 7 ALR3d 1204.

Automobiles: accidents arising from merger of traffic on limited-access highway with that from service road or ramp, 40 ALR3d 1429.

40-6-73. Entering or crossing roadway.

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 75; Code 1933, § 68A-404, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Driver yields to all vehicles in process of passing. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 specifies "all vehicles," which, in the absence of exceptions, must be construed to include vehicles which are in the process of passing, whether the vehicles are doing so in a legal or an illegal manner. *Munday v. Brissette*, 113 Ga. App. 147, 148 S.E.2d 55, rev'd on other grounds, 222 Ga. 162, 149 S.E.2d 110 (1966).

In an action arising out of an automobile accident, the trial court did not express an opinion to the jury as to which vehicle had the right-of-way, but carefully avoided answering the question posed by a juror which called on the court to express an opinion as to who had the right-of-way in the center turn lane where the accident occurred. *Latargia v. Toole*, 196 Ga. App. 692, 396 S.E.2d 607 (1990).

Visibility of approaching vehicles. — O.C.G.A. § 40-6-73 places no duty on

the driver entering the roadway to yield to even properly approaching vehicles if the approaching vehicles are not visible to the driver of the entering vehicle. *Harrison v. Ellis*, 199 Ga. App. 199, 404 S.E.2d 348 (1991).

Pattern charges on yielding the right of way and the duty to yield when entering or crossing a roadway from a private road were proper since, although the defendant did not at first see the plaintiff approaching, the defendant continued into the roadway after the defendant did see the plaintiff. *Claxton v. Lee*, 229 Ga. App. 357, 494 S.E.2d 80 (1997).

Knowledge of illegal approach. — O.C.G.A. § 40-6-73 requires a driver entering a roadway to yield to an illegally approaching vehicle only when the driver of the entering vehicle has knowledge of the illegal approach of that vehicle. *Harrison v. Ellis*, 199 Ga. App. 199, 404 S.E.2d 348 (1991).

Last clear chance. — While a charge on last clear chance might have helped clarify the issue of fault for the jury, it was not ground for reversal that such a charge was not given, absent any request for, or objection to, such an instruction. *Harrison v. Ellis*, 199 Ga. App. 199, 404 S.E.2d 348 (1991).

Section found inapplicable. — See *Blake v. Continental S.E. Lines*, 168 Ga. App. 718, 309 S.E.2d 829 (1983).

Jury instruction upheld. — Trial court did not err in instructing the jury that the plaintiff had no duty to yield the right-of-way if the jury found that the plaintiff, after stopping and looking, could not see the defendant's automobile as the plaintiff entered the roadway since the jury was authorized to find that the defendant's automobile was not visible to the plaintiff as the plaintiff entered the roadway and thus a charge indicating the possible inapplicability of O.C.G.A. § 40-6-73 under such circumstances was adjusted to the evidence. *Simpson v. Reed*, 186 Ga. App. 297, 367 S.E.2d 563, cert. denied, 186 Ga. App. 919, 367 S.E.2d 563 (1988); *Money v. Daniel*, 188 Ga. App. 215, 372 S.E.2d 305 (1988).

When there was conflicting testimony regarding how far from the store an accident occurred, but it was undisputed that the defendant pulled out of a stationary area and reentered a highway before the

accident, the trial court did not err in charging the jury on the issue of duty. *Hall v. Buck*, 206 Ga. App. 754, 426 S.E.2d 586 (1992).

Examination of an entire jury charge showed that the trial court correctly instructed the jury on the northbound motorist's duty to exercise ordinary care while looking for approaching vehicles before exiting a parking lot in a case where the northbound motorist was waved into a center lane and struck the southbound motorist's car that was already in the center lane but which the northbound motorist may not have seen approaching since the southbound lanes were backed up with cars. *Driscoll v. Walters*, 267 Ga. App. 688, 600 S.E.2d 744 (2004).

Evidence sufficient to support conviction. — Defendant's conviction of failure to yield when entering a roadway, O.C.G.A. § 40-6-73, was affirmed; the conviction was supported by sufficient evidence that the defendant failed to yield before pulling out from behind a parked car onto the roadway, and defendant validly waived the defendant's rights to counsel and to a jury trial. *Dellinger v. State*, 269 Ga. App. 878, 605 S.E.2d 632 (2004).

Cited in *Hunt v. Schmitt*, 190 Ga. App. 554, 379 S.E.2d 409 (1989); *Butler v. Huckabee*, 209 Ga. App. 761, 434 S.E.2d 576 (1993); *Roberts v. Dove*, 234 Ga. App. 853, 508 S.E.2d 213 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 287.

Am. Jur. Proof of Facts. — Last Clear Chance, 32 POF2d 625.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 53, 54, 56. 60A C.J.S., Motor Vehicles, § 846 et seq.

ALR. — Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Reciprocal duties of drivers of automo-

biles or other vehicles proceeding in the same direction, 47 ALR 703; 62 ALR 970; 104 ALR 485.

Right of way as between vehicles in street or highway and vehicles approaching from private driveway, 50 ALR 283.

Automobiles: cutting corners as negligence, 115 ALR 1178.

Liability for injury or damage growing out of pulling out of parked motor vehicle, 29 ALR2d 107.

40-6-74. Operation of vehicles on approach of authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle or a vehicle belonging to a federal, state, or local law enforcement

agency making use of an audible signal and visual signals meeting the requirements of Code Section 40-6-6, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle or law enforcement vehicle has passed, except when otherwise directed by a police officer.

(b) This Code section shall not operate to relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 76; Code 1933, § 68A-405, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Limitation of liability of persons rendering emergency care, §§ 31-11-8, 51-1-29, 51-1-30, 51-1-30.1.

JUDICIAL DECISIONS

Charge must fit evidence. — Trial court did not err in refusing to give a charge on O.C.G.A. § 40-6-74 if the charge was not adjusted to the evidence. *Lucas v. Love*, 238 Ga. App. 463, 519 S.E.2d 253 (1999).

Construction with O.C.G.A. § 40-6-6. — Read together, O.C.G.A. §§ 40-6-6 and 40-6-74 mandate that a driver has a duty to yield the right of way to an authorized law enforcement vehicle when the law enforcement vehicle approaches making use of an audible signal and visual signal under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, and furthermore the statutes do not restrict an "audible signal" to only sirens, and § 40-6-6 does not apply only when the authorized law enforcement vehicle is responding to an emergency call; accordingly, it was proper to give instructions as to §§ 40-6-6 and 40-6-74 in a suit by a driver who ran into a house while the

house was being moved and escorted by police vehicles. *Hersh v. Griffith*, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

Insufficient evidence for conviction. — There was no violation of O.C.G.A. § 40-6-74 when the evidence was that the officer's purpose was to stop the defendant for speeding and the state failed to prove that the defendant obstructed the roadway and prevented the officer from passing the defendant. *Jackson v. State*, 223 Ga. App. 27, 477 S.E.2d 28 (1996).

Evidence was not sufficient to support a conviction for failure to yield to an emergency vehicle since it was established that the police officer was pursuing the defendant, rather than seeking to pass the defendant. *Burrell v. State*, 225 Ga. App. 264, 483 S.E.2d 679 (1997).

Cited in *Findley v. McDaniel*, 158 Ga. App. 445, 280 S.E.2d 858 (1981); *Willis v. Love*, 232 Ga. App. 543, 502 S.E.2d 487 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 296 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 35, 53, 54, 56.

ALR. — Validity of statute or ordinance

giving right of way in streets or highways to certain classes of vehicles, 38 ALR 24.

Right of way at street or highway intersections, 47 ALR 595.

Right of way of vehicle carrying policeman, 65 ALR 140.

Construction and application of statutory provision requiring motorists to yield right-of-way to emergency vehicle, 87 ALR5th 1.

40-6-75. Highway construction and maintenance personnel and vehicles.

(a) The driver of a vehicle shall yield the right of way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic-control devices.

(b) The driver of a vehicle shall yield the right of way to an authorized vehicle actually engaged in work upon a highway whenever such vehicle displays flashing or revolving amber lights and has a permit to use such amber lights. (Code 1933, § 68A-406, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 35.

JUDICIAL DECISIONS

Jury instructions. — Trial court's omission of words from a jury instruction to the effect that there was a violation of O.C.G.A. § 40-6-75 was not error because the trial court's charge, which read verbatim from the statute and then charged the

jury on negligence per se, substantially covered the principles contained in the construction worker's request to charge. *Gates v. Navy*, 274 Ga. App. 180, 617 S.E.2d 163 (2005).

40-6-76. Funeral processions.

(a) As used in this Code section, a "funeral procession" means an array of motor vehicles in which the lead vehicle displays a sign, pennant, flag, or other insignia furnished by a funeral home indicating a funeral procession unless led by a state or local law enforcement vehicle and each vehicle participating in the funeral procession is operating its headlights.

(b) Funeral processions shall have the right of way at intersections subject to the following conditions and exceptions:

(1) Operators of vehicles in a funeral procession shall yield the right of way upon the approach of an authorized emergency vehicle or law enforcement vehicle giving an audible and visual signal; and

(2) Operators of vehicles in a funeral procession shall yield the right of way when directed to do so by a traffic officer.

(c) Funeral processions escorted by the police, a sheriff, or a sheriff's deputy shall have the right of way in any street or highway through

which they may pass. Local governments may, by ordinance, provide for such escort service and provide for the imposition of reasonable fees to defray the cost of such service.

(d) The operator of a vehicle not in a funeral procession shall not interrupt a funeral procession except when authorized to do so by a traffic officer or when such vehicle is an authorized emergency vehicle or law enforcement vehicle giving an audible and visual signal.

(e) Operators of vehicles not a part of a funeral procession shall not join a funeral procession by operating their headlights for the purpose of securing the right of way granted by this Code section to funeral processions.

(f) The operator of a vehicle not in a funeral procession shall not attempt to pass vehicles in a funeral procession on a two-lane highway.

(g) Any person violating subsection (d), (e), or (f) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$100.00.

(h) Any law enforcement officer who is directing or escorting a funeral procession in this state, whether such service is provided while on duty or not, shall enjoy the same immunities from liability as the officer possesses while in the performance of other official duties. (Code 1981, § 40-6-76, enacted by Ga. L. 1989, p. 1803, § 1; Ga. L. 1990, p. 1319, § 2; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Use of city owned motor vehicles for private escort service prohibited by city code. — Under a city code provision prohibiting use of city vehicles for anything other than the city's business,

police officers were prohibited from using city owned motorcycles to provide their own private funeral escort service. *Morton v. Bell*, 264 Ga. 832, 452 S.E.2d 103 (1995).

40-6-77. Penalties for causing serious injury due to right of way violation resulting in collision with motorcyclist, pedestrian, bicyclist, or farmer transporting vehicles hauling agricultural products, livestock, farm machinery, or farm products.

(a) For purposes of this Code section, "serious injury" shall include, but shall not be limited to, causing bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, by seriously disfiguring his or her head or body or a member thereof, or by causing organic brain damage which renders the body or any member thereof useless.

(b) Any person who causes a serious injury to another person as a result of a collision with a motorcyclist, bicyclist, pedestrian, or farmer

operating any vehicle used to transport agricultural products, livestock, farm machinery, or farm supplies by committing any right of way violation under this chapter when such motorcyclist, bicyclist, pedestrian, or farmer operating any vehicle used to transport agricultural products, livestock, farm machinery, or farm supplies is abiding by the provisions of this title shall be guilty of a misdemeanor and shall be punished:

(1) For a first offense, by a fine of not less than \$250.00 in addition to any other penalties stipulated by law and the court shall report such conviction to the Department of Driver Services; and

(2) For a second or subsequent offense within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, by a fine of not less than \$500.00 nor more than \$1,000.00 and imprisonment for not less than ten days nor more than 12 months. Any fine imposed under this paragraph shall be mandatory and shall not be suspended or waived or conditioned upon the completion of any course or sentence. The court imposing punishment under this subsection shall forward a record of the disposition of the case to the Department of Driver Services. (Code 1981, § 40-6-77, enacted by Ga. L. 2006, p. 504, § 2/HB 1392; Ga. L. 2009, p. 65, § 4/SB 196.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses under O.C.G.A. § 40-6-77 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

Fingerprinting required for viola-

tors. — Any misdemeanor offenses arising under subsection (b) of O.C.G.A. § 40-6-77 are offenses for which those charged are to be fingerprinted. 2010 Op. Att'y Gen. No. 10-6.

ARTICLE 5

RIGHTS AND DUTIES OF PEDESTRIANS

JUDICIAL DECISIONS

Cited in Edwards v. Trammell, 187 Ga. App. 22, 369 S.E.2d 288 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d., Automobiles and Highway Traffic, § 229.

Am. Jur. Trials. — Child-Pedestrian Accident Cases, 9 Am. Jur. Trials 427.

ALR. — Duty of pedestrian before

crossing street to look for vehicles approaching on intersecting street, 9 ALR 1248; 44 ALR 1299.

Duty and liability to persons struck by automobile while crossing street at un-

usual place, or diagonally, 14 ALR 1176; 67 ALR 313.

Liability for injury to child playing on or in proximity to automobile, 44 ALR 434.

Liability for injury by automobile to child playing ball in the street, 44 ALR 1304.

Validity, construction, and effect of regulations as to the time, place, or manner of crossing street by pedestrian, 49 ALR 1406.

Right or duty to turn in violation of law of road to avoid traveler, or obstacle, 63 ALR 277; 113 ALR 1328.

Liability for injury to pedestrian who suddenly darts or steps into path of automobile, 65 ALR 192; 113 ALR 528.

Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 ALR 96; 93 ALR 551.

Duty of pedestrian crossing street or

highway as regards looking for automobiles, 79 ALR 1073.

Liability of owner or operator of motor vehicle for injury to person who has alighted from or is waiting for streetcar or bus, 123 ALR 791.

Liability for injury by vehicle to construction or maintenance worker in street or highway, 5 ALR2d 757.

Application of "assured clear distance ahead" or "radius of lights" doctrine to accident involving pedestrian crossing street or highway, 31 ALR2d 1424.

Failure to comply with statute regulating travel by pedestrian along highway as affecting right to recovery for injuries or death resulting from collision with automobile, 45 ALR3d 658.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 ALR4th 1117.

40-6-90. Obedience to traffic-control devices and traffic regulations.

(a) A pedestrian shall obey the instructions of any official traffic-control device specifically applicable to him, unless otherwise directed by a police officer.

(b) Pedestrians shall be subject to traffic and pedestrian control signals as provided in Code Sections 40-6-21 and 40-6-22.

(c) At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 77; Code 1933, § 68A-501, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 44 ALR 1299.

Duty and liability to person struck by automobile while crossing street at unusual place or diagonally, 67 ALR 313.

Liability for collision of automobile with

pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 ALR3d 155.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 ALR3d 557.

40-6-91. Right of way in crosswalks.

(a) The driver of a vehicle shall stop and remain stopped to allow a pedestrian to cross the roadway within a crosswalk when the pedes-

trian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subsection, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impractical for the driver to yield.

(c) Subsection (a) of this Code section shall not apply under the conditions stated in subsection (b) of Code Section 40-6-92.

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 78; Code 1933, § 68A-502, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 229, § 3.)

JUDICIAL DECISIONS

Pedestrian in crosswalk is entitled to assume that approaching vehicle would yield right of way and not pass the other stopped vehicles. *Greene v. Helms*, 115 Ga. App. 447, 154 S.E.2d 892 (1967).

When the pedestrian plaintiff entered the roadway in the crosswalk and in accordance with the pedestrian-control signal, it was error to charge the jury on the "dart-out" provision of O.C.G.A. § 40-6-91. *Gaffron v. Metropolitan Atlanta Rapid Transit Auth.*, 229 Ga. App. 426, 494 S.E.2d 54 (1997).

When the plaintiff represented that the plaintiff safely entered a crosswalk, although admitting that the last time the plaintiff saw the defendant's vehicle was when the vehicle was slowing down, and that plaintiff entered the crosswalk when faced solely with a green arrow, and when the defendant's testimony was that the plaintiff "jetted out" into the path of the

defendant's vehicle as the defendant made a right turn on red, the jury's verdict in favor of the defendant was authorized by the evidence and the trial court did not err in denying the plaintiff's motion for new trial. *Sampson v. Jones*, 236 Ga. App. 57, 510 S.E.2d 902 (1999).

Instruction on accident. — Appellate court erred in reversing defendant's conviction for vehicular homicide based on her failure to stop for a pedestrian in a crosswalk because those charges were strict liability offenses to which the accident defense did not apply since it was undisputed she voluntarily drove into the crosswalk and struck the child. *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

Cited in Metropolitan Atlanta Rapid Transit Auth. v. Federick, 187 Ga. App. 696, 371 S.E.2d 204 (1988); *Weathers v. Foote & Davies Transp. Co.*, 189 Ga. App. 134, 375 S.E.2d 97 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 300.

C.J.S. — 60A C.J.S., Motor Vehicles, § 895.

ALR. — Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 9 ALR 1248; 44 ALR 1299.

Liability for injury to pedestrian colliding with side of automobile, 25 ALR 1513.

Contributory negligence of pedestrian at street crossing as affected by statute or ordinance, 96 ALR 786.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 ALR3d 557.

40-6-92. Crossing roadway elsewhere than at crosswalk.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway unless he has already, and under safe conditions, entered the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway if he uses the roadway instead of such tunnel or crossing.

(c) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices. When authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 79; Ga. L. 1967, p. 542, § 4; Code 1933, § 68A-503, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Defendant entitled to show child violated section. — Even though a child may not be chargeable with contributory negligence because of the child's tender age, the defendant is entitled to show that the plaintiff was in fact violating Ga. L. 1974, p. 633, § 1 when the child's injury was sustained. *Lewis v. Noonan*, 142 Ga. App. 654, 236 S.E.2d 900 (1977).

Pedestrian proceeding without care. — When the evidence revealed that the defendants had the right of way as the plaintiff proceeded heedlessly from the safety of the center median without using the nearby crosswalk, the defendant was not negligent per se and O.C.G.A. § 40-6-92 did not protect the plaintiff. *Etheredge v. Kersey*, 236 Ga. App. 243, 510 S.E.2d 544 (1998).

Crossing outside of crosswalk. — While O.C.G.A. § 40-6-92(a) does not absolutely prohibit a pedestrian from crossing the roadway outside of a crosswalk, the statute mandates that under those conditions, the pedestrian shall yield the right of way to all vehicles upon the roadway unless the pedestrian has already, and under safe conditions, entered the roadway. *Nelson v. State*, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

Jury instruction. — When the pedestrian plaintiff entered the roadway in the crosswalk and in accordance with the pedestrian-control signal, it was error to charge the jury on subsection (a) of O.C.G.A. § 40-6-92. *Gaffron v. Metropolitan Atlanta Rapid Transit Auth.*, 229 Ga. App. 426, 494 S.E.2d 54 (1997).

Cited in *Conner v. Mangum*, 132 Ga. App. 100, 207 S.E.2d 604 (1974); *Hill v. Copeland*, 148 Ga. App. 232, 250 S.E.2d 822 (1978); *Weathers v. Foote & Davies*

Transp. Co., 189 Ga. App. 134, 375 S.E.2d 97 (1988); *Shilliday v. Dunaway*, 220 Ga. App. 406, 469 S.E.2d 485 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 301.

C.J.S. — 60A C.J.S., Motor Vehicles, § 895.

ALR. — Crossing street elsewhere than at regular crossing as contributory negligence precluding recovery for injury from defect or obstruction, 3 ALR 1113.

Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 9 ALR 1248; 44 ALR 1299.

Liability for injury to pedestrian colliding with side of automobile, 25 ALR 1513.

Liability for injury on park strip between sidewalk and curb, 59 ALR 387; 61 ALR 267; 19 ALR2d 1053.

Duty and liability to person struck by automobile while crossing street at unusual place or diagonally, 67 ALR 313.

Liability for injury on parking or strip between sidewalk and curb, 19 ALR2d 1053.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 ALR3d 557.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from defect or obstruction on roadside parkway or parking strip, 98 ALR3d 439.

40-6-93. Drivers to exercise due care.

Notwithstanding other provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, shall give warning by sounding his horn when necessary, and shall exercise proper precautions upon observing any child or any obviously confused, incapacitated, or intoxicated person. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 80; Code 1933, § 68A-504, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Ordinary care required. — Legal requisite of a motorist as to parties on the street or highway, whether in other vehicles or as pedestrians, and whether a child or adult, is the exercise of ordinary care. *Reed v. Dixon*, 153 Ga. App. 604, 266 S.E.2d 286 (1980).

One lying prone in the highway in a drunken condition is owed a duty of care if one is lying in the open on a flat road, even though undiscovered. A driver in such a situation is under a duty to discover the victim's peril and avoid injury to that person. *Fountain v. Thompson*, 252 Ga. 256, 312 S.E.2d 788 (1984).

Applicability. — Provisions of O.C.G.A.

§ 40-6-93 do not purport to apply to duties owed to other drivers, but focuses on duties owed to persons on the highway; the statute had no applicability to a case against a motorist brought by a motorcyclist who claimed that the motorist failed to avoid a collision once the motorist ascertained that the motorcyclist was not in control of the vehicle. *McKissick v. Giroux*, 272 Ga. App. 499, 612 S.E.2d 827 (2005).

Applicability to bicyclists. — Courts have applied the provisions of Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see O.C.G.A. § 40-6-93) to bicyclists. *Howard v. Hall*, 112 Ga. App. 247, 145 S.E.2d 70 (1965).

Jury charge upheld. — Charge to the

jury under Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see O.C.G.A. § 40-6-93), that “every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway,” etc., which added thereafter the phrase “or such other user of any roadway,” which was not contained in that section, was not error especially since the language imposed no greater duty on the defendant than does the common law. *Hughes v. Brown*, 111 Ga. App. 676, 143 S.E.2d 30 (1965).

Trial court did not err in charging the jury on O.C.G.A. § 40-6-93 as the court included limiting instructions. As part of the court’s instructions, the trial court read the accusation, defined the charged crimes, explained that the state bore the burden of proving the material elements of those offenses, and told the jury that the jury could find the defendant guilty only if the jury determined beyond a reasonable doubt that the defendant committed the offenses as alleged in the accusation. *Hughes v. State*, 290 Ga. App. 475, 659 S.E.2d 844 (2008).

No merger into vehicular homicide. — Defendant’s reckless driving, running a

red light, and less safe driving under the influence convictions merged into the defendant’s reckless vehicular homicide convictions, which involved two deaths resulting from the defendant’s striking a car; however, the failure to exercise due care conviction involving the defendant’s striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Merger required remand for resentencing. — Because the defendant’s misdemeanor sentence, based on the failure to exercise due care, was also based in part on convictions that merged with the reckless vehicular homicide counts, and because the trial court never vacated the defendant’s convictions for the misdemeanor counts charged, the relevant portions of the defendant’s sentence were vacated and the case was remanded for resentencing. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Cited in *Johnson v. Ellis*, 179 Ga. App. 343, 346 S.E.2d 119 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 406, 413, 417, 969.

Am. Jur. Proof of Facts. — Last Clear Chance, 32 POF2d 625.

C.J.S. — 60A C.J.S., Motor Vehicles, § 891.

ALR. — Injury by road vehicle to person on sidewalk, 1 ALR 840; 75 ALR 559.

Right or duty to turn in violation of law of road to avoid traveler, or obstacle, 24 ALR 1304; 63 ALR 277; 113 ALR 1328.

Liability for injury to pedestrian colliding with side of automobile, 25 ALR 1513.

Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 44 ALR 1299.

Liability for injury by automobile to child playing ball in the street, 44 ALR 1304.

Liability for injury on park strip be-

tween sidewalk and curb, 59 ALR 387; 61 ALR 267; 19 ALR2d 1053.

Liability for injury to pedestrian struck by automobile as affected by his blindness, deafness, or other physical disability, 62 ALR 578.

Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 ALR 96; 93 ALR 551.

Duty and liability to person struck by automobile while crossing street at unusual place or diagonally, 67 ALR 313.

Liability of owner or operator of motor vehicle for injury to person who has alighted from or is waiting for streetcar or bus, 123 ALR 791.

Intoxication of person injured or killed as affecting applicability of last clear chance doctrine, 26 ALR2d 308.

Duty of motor vehicle driver approaching place where children are playing or gathered, 30 ALR2d 5.

Application of “assured clear distance ahead” or “radius of lights” doctrine to

accident involving pedestrian crossing street or highway, 31 ALR2d 1424.

Liability for motor vehicle accident where vision of driver is obscured by smoke, dust, atmospheric condition, or unclear windshield, 42 ALR2d 13; 32 ALR4th 933.

Rights of injured guest as affected by obscured vision from vehicle in which he was riding, 42 ALR2d 350; 32 ALR4th 933.

Instructions on sudden emergency in motor vehicle cases, 80 ALR2d 5.

Motorist's liability for injury to one in or about a street or highway for the purpose of directing or warning traffic, 98 ALR2d 1169.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 ALR3d 557.

Liability of motorist colliding with person engaged about stalled or disabled vehicle on or near highway, 27 ALR3d 12.

Automobiles: sudden emergency as exception to rule requiring motorist to maintain ability to stop within assured clear distance ahead, 75 ALR3d 327.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from defect or obstruction on roadside parkway or parking strip, 98 ALR3d 439.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 ALR4th 933.

Sufficiency of evidence to raise last clear chance doctrine in case of automobile collision with pedestrian or bicyclist—modern cases, 9 ALR5th 826.

40-6-94. Right of way of blind pedestrian.

The driver of every vehicle shall yield the right of way to any blind pedestrian who is carrying a walking cane or stick white in color or white tipped with red or who is accompanied by a guide dog. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 80; Code 1933, § 68A-504.1, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Guarantee of equal access to and use of public accommodations, facilities, and privileges by

persons with visual disabilities and deaf persons, § 30-4-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 498.

C.J.S. — 60A C.J.S., Motor Vehicles, § 885.

40-6-95. Pedestrian under influence of alcohol or drug.

A person who is under the influence of intoxicating liquor or any drug to a degree which renders him a hazard shall not walk or be upon any roadway or the shoulder of any roadway. Violation of this Code section is a misdemeanor and is punishable upon conviction by a fine not to exceed \$500.00. (Code 1933, § 68A-505.1, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-96; Code 1981, § 40-6-95, as redesignated by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Not lesser included offense of DUI.

— As a matter of fact or of law, the offense of being a pedestrian under the influence is not a lesser included offense of the offense of driving under the influence. *Dickson v. State*, 167 Ga. App. 685, 307 S.E.2d 267 (1983).

Probable cause. — Probable cause for arrest exists when the defendant stated the defendant was drunk and the officer observed signs of intoxicated behavior. *Miller v. State*, 221 Ga. App. 494, 471 S.E.2d 565 (1996).

Questions for jury. — When the decedent was run over by a bus after the driver let the decedent off on the roadway approximately four feet from the curb and about 25 feet from the bus stop, the issues of the decedent's negligence and the duty

of care owed to the decedent were questions for the jury. *Cuthbert v. Metropolitan Atlanta Rapid Transit Auth.*, 190 Ga. App. 550, 379 S.E.2d 413 (1989), cert. denied, 190 Ga. App. 897, 379 S.E.2d 413 (1989).

Not applicable in tort action. — Defendants failed to show, as a matter of law, that the alcohol and cocaine in the deceased's system rendered him a "hazard" in violation of O.C.G.A. § 40-6-95. Moreover, there was no evidence to suggest that the deceased wandered onto the highway in violation of O.C.G.A. § 40-6-96. *Swinney v. Schneider Nat'l Carriers, Inc.*, 829 F. Supp. 2d 1358 (N.D. Ga. Nov. 7, 2011).

Cited in *White v. State*, 310 Ga. App. 386, 714 S.E.2d 31 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 439, 509.

C.J.S. — 60A C.J.S., Motor Vehicles, § 886.

ALR. — Intoxication of person injured or killed as affecting applicability of last clear chance doctrine, 26 ALR2d 308.

40-6-96. Pedestrians on or along roadway.

(a) As used in this Code section, the term "pedestrian" means any person afoot and shall include, without limitation, persons standing, walking, jogging, running, or otherwise on foot.

(b) Where a sidewalk is provided, it shall be unlawful for any pedestrian to stand or stride along and upon an adjacent roadway unless there is no motor vehicle traveling within 1,000 feet of such pedestrian on such roadway or the available sidewalk presents an imminent threat of bodily injury to such pedestrian.

(c) Where a sidewalk is not provided but a shoulder is available, any pedestrian standing or striding along and upon a highway shall stand or stride only on the shoulder, as far as practicable from the edge of the roadway.

(d) Where neither a sidewalk nor a shoulder is available, any pedestrian standing or striding along and upon a highway shall stand or stride as near as practicable to an outside edge of the roadway, and, if on a two-lane roadway, shall stand or stride only on the left side of the roadway.

(e) Except as otherwise provided in this chapter, any pedestrian upon a roadway shall yield the right of way to all vehicles upon the roadway.

(f) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given.

(g) No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 82; Code 1933, § 68A-506, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-97; Code 1981, § 40-6-96, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2009, p. 65, § 5/SB 196.)

JUDICIAL DECISIONS

Duty to create walkway. — No duty exists at law to design a roadway with a sidewalk or transversable shoulder; however, a duty to create a walkway may be created by ordinance or by an accepted industry standard for a particular type of development. *Samuelson v. Lord, Aeck & Sergeant, Inc.*, 205 Ga. App. 568, 423 S.E.2d 268, cert. denied, 205 Ga. App. 901, 423 S.E.2d 268 (1992).

Questions for jury. — When the decedent was run over by a bus after the driver let the decedent off on the roadway approximately four feet from the curb and about 25 feet from the bus stop, the issues of the decedent's negligence and the duty of care owed to the decedent were questions for the jury. *Cuthbert v. Metropolitan Atlanta Rapid Transit Auth.*, 190 Ga. App. 550, 379 S.E.2d 413 (1989), cert. denied, 190 Ga. App. 897, 379 S.E.2d 413 (1989).

Partial summary judgment was inappropriate in a pedestrian's personal injury lawsuit after the driver's car crossed the white line before striking the pedestrian because even the driver's expert testified that the part of the road between the white line and the curb was part of the shoulder of the road. *Field v. Lowery*, 300 Ga. App. 812, 686 S.E.2d 422 (2009).

What constitutes "sidewalk." — When there is an excavation extending from a property line across a walkway, leaving only an 18-inch ledge, this ledge

cannot be held as a matter of law to be a "sidewalk" within the contemplation of Ga. L. 1953, Nov.-Dec. Sess., p. 556. *Roseberry v. Freeman*, 97 Ga. App. 545, 103 S.E.2d 745 (1958).

Subsection (d) applies only to two-lane roads. — Partial summary judgment was inappropriate in a pedestrian's personal injury lawsuit since the driver's car crossed the white line before striking the pedestrian because O.C.G.A. § 40-6-96(d) was inapplicable to require the pedestrian to walk on the left since by the statute's clear language, this provision applied to two-lane roads, and the accident occurred on a part of a highway where it was four-lanes wide. *Field v. Lowery*, 300 Ga. App. 812, 686 S.E.2d 422 (2009).

Not applicable in tort action. — Defendants failed to show, as a matter of law, that the alcohol and cocaine in the deceased's system rendered him a "hazard" in violation of O.C.G.A. § 40-6-95. Moreover, there was no evidence to suggest that the deceased wandered onto the highway in violation of O.C.G.A. § 40-6-96. *Swinney v. Schneider Nat'l Carriers, Inc.*, 829 F. Supp. 2d 1358 (N.D. Ga. Nov. 7, 2011).

Sufficiency of evidence to convict. — Evidence that defendant was walking in the middle of the roadway, causing cars to stop to avoid hitting the defendant, supported the defendant's conviction un-

der O.C.G.A. § 40-6-96(c). *McCormack v. State*, 325 Ga. App. 183, 751 S.E.2d 904 (2013).

Cited in *Tiller v. State*, 286 Ga. App. 230, 648 S.E.2d 738 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 321, 322.

ALR. — Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 ALR 96; 93 ALR 551.

Liability of owner or operator of motor vehicle for injury to person who has alighted from or is waiting for streetcar or bus, 123 ALR 791.

40-6-97. Pedestrians soliciting rides or business.

(a) No person shall stand in a roadway for the purpose of soliciting a ride.

(b) Except as provided in Code Section 40-6-97.1, no person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.

(c) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 82; Code 1933, § 68A-507, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-98; Code 1981, § 40-6-97, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 737, § 1.)

JUDICIAL DECISIONS

Forbidding of business upon paved area of highway. — For a pedestrian to choose the paved area of a highway for a place to stand and transact business, no matter how laudable the business itself might be, is certainly a privilege rather than a right, and therefore subject to regulation by the state, which may, if the state deems proper, forbid it entirely. *Zeiger v. State*, 140 Ga. App. 610, 231 S.E.2d 494 (1976).

Elements essential for conviction under subsection (b). — There were three elements essential of proof for conviction of the offense in subsection (b) of former Code 1933, § 68A-507: (1) that the person accused be “on a highway”; (2) “for the purpose of soliciting”; and (3) “from the occupant of any vehicle.” *Crook v. State*, 156 Ga. App. 756, 275 S.E.2d 794 (1980) (see O.C.G.A. § 40-6-97).

Person solicited standing away from car. — Conviction under subsection (b) of former Code 1933, § 68A-507 cannot be sustained since the person from whom the defendant solicited business was standing five or six feet from that person’s car at the time the defendant handed the person the defendant’s business card. The person who was solicited was not the “occupant” of a vehicle. Thus, the state failed to prove an essential element of the offense. *Crook v. State*, 156 Ga. App. 756, 275 S.E.2d 794 (1980) (see O.C.G.A. § 40-6-97).

Passing out literature in support of presidential candidate while standing in a roadway did not fall within any prescription of O.C.G.A. § 40-6-97. *Robinson v. State*, 177 Ga. App. 848, 341 S.E.2d 497 (1986).

Cited in *Carroll v. State*, 157 Ga. App. 113, 276 S.E.2d 267 (1981).

40-6-97.1. Solicitation permits for charitable organizations.

Municipal or county governments are authorized to adopt ordinances for the issuance of permits for the solicitation of contributions on streets and highways within the geographic jurisdiction of such governments to charitable organizations registered in accordance with Code Section 43-17-5 and to charitable organizations exempt from such registration in accordance with Code Section 43-17-9. (Code 1981, § 40-6-97.1, enacted by Ga. L. 1996, p. 737, § 1; Ga. L. 2001, p. 4, § 40.)

Cross references. — Application for registration as a solicitor agent, § 43-17-3.1.

40-6-98. Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone. (Code 1933, § 68A-508, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-99; Code 1981, § 40-6-98, as redesignated by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Cited in *Switlick v. State*, 295 Ga. App. 849, 673 S.E.2d 323 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 230.

C.J.S. — 60A C.J.S., Motor Vehicles, § 891.

40-6-99. Pedestrians to yield to authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of Code Section 40-8-94, and visual and audible signals meeting the requirements of Code Section 40-6-6 or a vehicle belonging to a federal, state, or local law enforcement agency making use of visual and audible signals meeting the requirements of Code Section 40-6-6, every pedestrian shall yield the right of way to the authorized emergency vehicle or law enforcement vehicle.

(b) This Code section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian. (Code 1933, § 68A-510, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-101; Code 1981, § 40-6-99, as redesignated by Ga. L. 1990, p. 2048, § 5.)

Cross references. — Limitation of liability of persons rendering emergency care, §§ 31-11-8, 51-1-29, 51-1-30, and 51-1-30.1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 296 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 870, 871.

40-6-100. Right of way on sidewalks.

Repealed by Ga. L. 1990, p. 2048, § 5, effective January 1, 1991.

Editor's notes. — This Code section was based on Ga. L. 1974, p. 633, § 1. For present provisions pertaining to pedes-

trian right of way on sidewalk, see Code Section 40-6-144.

40-6-101. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 5, redesignated former Code Section 40-6-101 as present Code Section 40-6-99.

ARTICLE 6

TURNING, STARTING, SIGNALING

Administrative rules and regulations. — Penalties for Violations of Uniform Rules of the Road, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Department of Driver Services, Rule 375-3-3-.01.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent Left Turn of Motor Vehicle, 35 POF2d 405. Proof of Negligence of Motorist in Sig-

naling Other Vehicle or Pedestrian to Proceed or Pass, 31 POF3d 145.

40-6-120. Methods of turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) **Right turn.** Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway;

(2) **Left turn.** (A) As used in this paragraph, the term "extreme left-hand lane" means the lane furthest to the left that is lawfully available to traffic moving in the same direction as the turning vehicle. In the event of multiple lanes, the second extreme left-hand lane shall be the lane to the right of the extreme left-hand lane that is lawfully available to traffic moving in the same

direction as the turning vehicle. The third extreme left-hand lane shall be the lane to the right of the second extreme left-hand lane and so forth.

(B) The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the turning vehicle. Whenever practicable, the left turn shall be made to the left of the center of the intersection and so as to exit the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as the turning vehicle on the roadway being entered.

(C) In the event of multiple left turn lanes, the driver of a vehicle turning left shall exit the intersection in the same relative travel lane as the vehicle entered the intersection. If the vehicle is in the second extreme left-hand lane entering the intersection, the vehicle shall exit the intersection in the second extreme left-hand lane. Where there are multiple lanes of travel in the same direction safe for travel, a vehicle shall not be permitted to make a lane change once the intersection has been entered. (Code 1981, § 40-6-120, enacted by Ga. L. 2010, p. 256, § 1/HB 1231; Ga. L. 2011, p. 752, § 40/HB 142.)

Editor's notes. — Ga. L. 2010, p. 256, § 1/HB 1231, effective July 1, 2010, repealed former Code Section 40-6-120, pertaining to required position and methods of turning at intersections, and traffic-control devices, and enacted the present Code section. The former Code section was based on Ga. L. 1953,

Nov.-Dec. Sess., p. 556, § 66; Code 1933, § 68A-601, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.

Ga. L. 2010, p. 256, § 5/HB 1231, not codified by the General Assembly, provides that the enactment by that Act shall apply to all offenses committed on or after July 1, 2010.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68A-601 and former O.C.G.A. § 40-6-120, are included in the annotations for this Code section.

Area held not to be "intersection." — Area within which private driveway or private way joins with public road is not "intersection" as defined by law. *Howard v. Hall*, 112 Ga. App. 247, 145 S.E.2d 70 (1965) (decided under former law).

Statute was unconstitutionally vague. — In light of the conflict in the language of former O.C.G.A. § 40-6-120(a)(2), a person of common intelligence could not determine with rea-

sonable definiteness that the statute prohibited the making of a left turn into the right lane of a multi-lane roadway. Accordingly, former § 40-6-120(a)(2) was too vague to be enforced against a driver of a vehicle making a left turn into a multi-lane roadway that lacked official traffic-control devices directing the driver into which lane to turn and was, therefore, unconstitutional under the due process clauses of the Georgia and United States Constitutions. *McNair v. State*, 285 Ga. 514, 678 S.E.2d 69 (2009) (decided under former O.C.G.A. § 40-6-120).

Section not applicable to turn made into private driveway. — Since former O.C.G.A. § 40-6-120 was substantially

the same as former Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 66, which was not applicable to a turn made from a public highway into a private driveway, its charge in such instances was error. *Hill v. Yara Eng'g Co.*, 157 Ga. App. 281, 277 S.E.2d 256 (1981).

Turns should be made in compliance with road markings. — Turns should be made from the roadway, but more particularly, in compliance with the patterns established by the markings (official traffic control devices) on the road. *State v. Williams*, 156 Ga. App. 813, 275 S.E.2d 133 (1980) (decided under Ga. L. 1974 p. 633, § 1).

Driver who is turning as directed by a traffic control device was not relieved from complying with other rules of the road, such as signaling or maintaining a diligent lookout. *Richardson v. Chesky*, 235 Ga. App. 28, 508 S.E.2d 441 (1998) (decided under former O.C.G.A. § 40-6-120).

Turning right from end of emergency lane prior to entry into intersection. — When the defendant in the defendant's vehicle proceeded along the emergency lane and turned therefrom, despite the presence of a solid white line

indicating the end of the emergency lane, prior to the defendant's entry into the intersection, the officer was justified in stopping the defendant for making an improper right turn. *State v. Williams*, 156 Ga. App. 813, 275 S.E.2d 133 (1980) (decided under Ga. L. 1974, p. 633, § 1).

Turning right from lane adjacent to right-hand lane. — Trial court did not err in finding that an officer's traffic stop was unreasonable and not based on the observation of an illegal right turn in violation of former O.C.G.A. § 40-6-120(a)(1), given evidence that the defendant activated the turn signal and checked for traffic behind the vehicle prior to turning right from a lane adjacent to the right-hand-turn lane. Therefore, evidence of the defendant's alcohol consumption taken after the officer's stop was properly suppressed. *State v. Mincher*, 313 Ga. App. 875, 723 S.E.2d 300 (2012) (decided under former O.C.G.A. § 40-6-120).

Officer's observation of an illegal left turn served to provide the officer with reasonable suspicion as a basis for the officer's initial encounter with the defendant. *Welborn v. State*, 232 Ga. App. 837, 503 S.E.2d 85 (1998) (decided under former O.C.G.A. § 40-6-120).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 241.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 53, 54, 56. 60A C.J.S., Motor Vehicles, §§ 609, 700, 703.

ALR. — Automobiles: cutting corners as negligence, 6 ALR 321; 115 ALR 1178.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Automobile crossing street at a point

other than a street intersection, 57 ALR 1106.

Rights and duties at intersection of arterial (or other favored) highway and nonfavored highway, 58 ALR 1197; 81 ALR 185.

Duty and liability of vehicle drivers approaching intersection of one-way street with other street, 62 ALR2d 275.

What is a street or highway intersection within traffic rules, 7 ALR3d 1204.

40-6-121. U-turns.

No vehicle shall be turned so as to proceed in the opposite direction:

(1) Upon any curve;

(2) Upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of another vehicle approaching from either direction;

(3) Where such turn cannot be made in safety and without interfering with other traffic; or

(4) Where a prohibition is posted. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 67; Code 1933, § 68A-602, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Cited in *Cason v. Columbus*, 148 Ga. App. 208, 250 S.E.2d 836 (1978); *Hashemy v. State*, 167 Ga. App. 96, 306 S.E.2d 65 (1983); *State v. Webb*, 193 Ga.

App. 2, 386 S.E.2d 891 (1989); *Neiswonger v. Janics*, 196 Ga. App. 607, 396 S.E.2d 553 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 244.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 53, 54, 56. 60A C.J.S., Motor Vehicles, § 706.

ALR. — Reciprocal duties of drivers of

automobiles or other vehicles proceeding in the same direction, 47 ALR 703; 62 ALR 970; 104 ALR 485.

Automobiles: liability for U-turn collisions, 53 ALR4th 849.

40-6-122. Starting parked vehicle.

No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 68; Code 1933, § 68A-603, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Evidence disclosed no negligent action on part of bus driver. — See *Blake v. Continental S.E. Lines*, 168 Ga. App. 718, 309 S.E.2d 829 (1983).

Instruction on truck operating on public road. — In an action for injuries sustained by the plaintiff when the plaintiff was thrown from the defendant's truck's running board, where the plaintiff had been standing at the defendant's request to keep the truck from toppling over

as the defendant drove the truck out of a ditch, since the direct and circumstantial evidence authorized the finding that the truck was being operated in the public road at the time the plaintiff contends the plaintiff was injured, an instruction with reference to the violations of the sections regulating the driving of automobiles on public roads was justified. *Bramlett v. Hulsey*, 98 Ga. App. 39, 104 S.E.2d 614 (1958).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 693.

ALR. — Liability for injury or damage

growing out of pulling out of parked motor vehicle, 29 ALR2d 107.

40-6-123. Turning movements; signals required on turning, changing lanes, slowing, or stopping.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Code Section 40-6-120 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or change lanes or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate and timely signal in the manner provided in this Code section.

(b) A signal of intention to turn right or left or change lanes when required shall be given continuously for a time sufficient to alert the driver of a vehicle proceeding from the rear in the same direction or a driver of a vehicle approaching from the opposite direction.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in this Code section to the driver of any vehicle immediately to the rear when there is an opportunity to give such signal.

(d) The signals provided for in subsection (b) of Code Section 40-6-124 shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 69; Code 1933, § 68A-604, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this Code section.

Signal required for safety of others. — Legislature's concern is plainly the preservation of the safety of others by requiring sufficient notice of the driver's intent to turn or change lanes, and the use of the term "when required" in O.C.G.A. § 40-6-123(b) clearly indicates that it anticipated times when use of a signal was not required for the safety of others. *Clark v. State*, 208 Ga. App. 896, 432 S.E.2d 220 (1993).

Purpose of signals. — One purpose of giving a hand and arm signal upon stop-

ping, starting, or turning an automobile is to command the attention of the drivers of other automobiles and to make other drivers aware of the intentions of the driver signaling in order to avoid collisions. *Pfeifer v. Yellow Cab Co.*, 88 Ga. App. 221, 76 S.E.2d 225 (1953) (decided under former Code 1933, § 68-303).

Signal requirements (hand and arm) of statute were not superseded by a mechanical attachment on the vehicle placed there for the purpose of signaling to other users of the highway the intention of the driver to stop the driver's vehicle or make a turn. *Eidson v. Felder*, 69 Ga. App. 225, 25 S.E.2d 41 (1943) (decided under former Code 1933, § 68-303).

Imposition of legal duty to ascertain safety of turning movement. — Sense of the first sentence of former Code 1933, § 68-303 was to impose a legal duty to ascertain the safety of a turning movement before deviating from a direct course of travel, at intersections, or to enter a private road or driveway, and elsewhere. *Crouch v. Nicholson*, 116 Ga. App. 12, 156 S.E.2d 384 (1967) (decided under former Code 1933, § 68-303).

Application to vehicle turning from direct course of travel. — In a jury charge, former Code 1933, § 68-303 was applicable to a vehicle which was upon the highway and turned to the right or left from a direct course of travel. *Shank v. Nexsen*, 127 Ga. App. 684, 194 S.E.2d 586 (1972).

Failure to signal for lane change. — When an officer testified that the defendant changed lanes without a signal at a time when traffic was heavy and that such a lane change was unsafe, the officer's stop of the defendant's vehicle was not pretextual. *Knight v. State*, 234 Ga. App. 359, 506 S.E.2d 245 (1998).

Probable cause existed to stop the defendant's car because the defendant failed to signal while changing lanes as required by O.C.G.A. § 40-6-123 as the officer's car was approximately 30 feet behind the defendant, and the Fourth Amendment did not require that a traffic citation be issued. *United States v. Woods*, No. 09-15555, 2010 U.S. App. LEXIS 13642 (11th Cir. July 2, 2010) (Unpublished).

Officer's traffic stop of a defendant was justified by specific articulable facts giving the officer a reasonable suspicion of a traffic violation, i.e. changing lanes without reasonable safety in violation of O.C.G.A. § 40-6-123(a), even though the defendant was ultimately acquitted of that offense, given that the defendant abruptly changed lanes in front of the officer without signalling, requiring the officer to apply the officer's brakes. *Parker v. State*, 307 Ga. App. 61, 704 S.E.2d 438 (2010).

Evidence, viewed in the light most favorable to the prosecution, authorized the jury to find that the defendant turned without signaling because a patrol officer testified that the officer saw that the de-

fendant twice failed to use a turn signal when traffic conditions required the defendant to do so. *Nunnally v. State*, 310 Ga. App. 183, 713 S.E.2d 408 (2011).

Trial court did not err in denying defendant's motion to suppress on the ground that the traffic stop was improperly based on a violation of O.C.G.A. § 40-6-123 for movement of a vehicle into the dedicated turn lane without a signal because there existed a reasonable articulable suspicion for a brief investigatory stop of the vehicle based on the officer's observation that defendant was not wearing a seatbelt. The seatbelt violation alone authorized a stop of the vehicle. *Wilson v. State*, 318 Ga. App. 59, 733 S.E.2d 365 (2012).

Left turn signal was not necessary from a left-turn-only lane and, since the defendant made a U-turn from such position, an officer was not justified in making a stop based on the officer's conclusion that the defendant was intoxicated. *State v. Goodman*, 220 Ga. App. 169, 469 S.E.2d 327 (1996).

Driver who is turning as directed by a traffic control device is not relieved from complying with other rules of the road such as signaling or maintaining a diligent lookout. *Richardson v. Chesky*, 235 Ga. App. 28, 508 S.E.2d 441 (1998).

Negligence per se. — When the defendant came to a complete or almost complete stop in the road, allegedly without any brake, emergency, or signal lights, at a time and place where traffic was "bad," there was evidence that the defendant was negligent per se and partially at fault for the subsequent accident where a car following the defendant was hit by another car, and a directed verdict in favor of the defendant was reversed. *Harrison v. Jenkins*, 235 Ga. App. 665, 510 S.E.2d 345 (1998).

Use of signals as "do pass" signal is negligence per se. — It is negligence per se for the operator of a motor vehicle to use that operator's electrical directional signals to indicate it is safe for a following motorist to pass. *Cunningham v. National Serv. Indus., Inc.*, 174 Ga. App. 832, 331 S.E.2d 899 (1985).

Evidence insufficient to support conviction of improper lane changing. — See *Eisenberger v. State*, 177 Ga.

App. 673, 340 S.E.2d 232, cert. denied, 479 U.S. 818, 107 S. Ct. 77, 93 L. Ed. 2d 33 (1986).

Evidence obtained from search after legal stop. — When any one of the traffic violations observed by a police officer would have provided probable cause to effectuate a traffic stop, the trial court's denial of a motion to suppress evidence found during a subsequent search of the defendant's person, based upon an allegedly improper traffic stop, was not clearly erroneous. *Tukes v. State*, 236 Ga. App. 77, 511 S.E.2d 534 (1999).

Defendant's Fourth Amendment rights were not violated because there was probable cause to stop a taxicab because a taxicab driver violated O.C.G.A. § 40-6-123 by an improper lane change and, even assuming that the defendant, as a passenger, had an expectation of privacy, the defendant was present when the driver consented and never expressed any disagreement to a search of the passenger compartment. *United States v. Harris*, 526 F.3d 1334 (11th Cir. 2008), cert. denied, 129 S. Ct. 569, 172 L.Ed.2d 433 (2008).

Evidence sufficient for injury by vehicle after violating statute. — With regard to a defendant's convictions for improper lane change, serious injury by vehicle while driving under the influence, and misdemeanor obstruction of an officer, there was sufficient evidence to support the convictions based on an officer's testimony that the defendant attempted to leave the scene several times and the evidence of the defendant's vehicle passenger suffering a severe injury to the left eye. It was unnecessary to show that the passenger's eye was permanently rendered useless. *Wells v. State*, 297 Ga. App. 153, 676 S.E.2d 821 (2009).

Evidence insufficient to support stopping car for changing lanes. — When the nearest following car was approximately 100 yards away, and there was no evidence to suggest that the road or traffic conditions were such that it was unsafe for the defendants to have changed lanes without using a turn signal, there was no basis for stopping the car. *Bowers v. State*, 221 Ga. App. 886, 473 S.E.2d 201 (1996).

No evidence refuting officer's testimony. — When there was no evidence in the record refuting a police officer's testimony that the officer stopped the defendant because of a failure to signal a turn, the trial court's decision to deny a motion to suppress was supported by the record. *Williams v. State*, 236 Ga. App. 102, 511 S.E.2d 216 (1999).

Trial court erred in charging the jury under O.C.G.A. § 40-6-123(c) in an action arising out of a rear-end collision, since although there was evidence that the driver slowed down when the driver approached an intersection, there was no evidence that the driver applied the driver's brakes, and there was no evidence as to whether the driver gave an appropriate signal by hand and arm or signal lamps. *Wallace v. Ramey*, 191 Ga. App. 293, 381 S.E.2d 434 (1989).

Instructions. — Reversal of the defendant's conviction for improper lane change was required since the trial court first instructed the jury by reading the language of the accusation charging the defendant with an improper lane change in violation of O.C.G.A. § 40-6-48, then later read subsection (b) of O.C.G.A. § 40-6-123 and told the jury that the defendant was charged with improper lane change in violation thereof. *Threatt v. State*, 240 Ga. App. 592, 524 S.E.2d 276 (1999).

When the defendant was charged with failing to maintain the defendant's lane in violation of O.C.G.A. § 40-6-48 and failing to use a turn signal in violation of O.C.G.A. § 40-6-123, the trial court properly instructed the jury as to the definition of the standard for strict liability offenses because the state was not required to prove mental fault or mens rea in those offenses; although O.C.G.A. § 40-6-10(b) required proof that the defendant knowingly operated the vehicle with no insurance, and O.C.G.A. § 40-6-270 required proof that the defendant knowingly failed to stop and comply with the statute's mandates, the trial court's charge on intent was found sufficient. *Augustin v. State*, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Because the accusation read to the jury charged an improper lane change, but the jury was twice instructed on the elements of failure to maintain a lane, these incon-

sistent instructions required reversal of the defendant's improper lane change conviction. *Walker v. State*, 280 Ga. App. 393, 634 S.E.2d 177 (2006).

Evidence insufficient to support conviction. — Evidence was insufficient to sustain a conviction since there was no evidence that a turn signal was required to alert other drivers in the area to the defendant's turn. *Moore v. State*, 234 Ga. App. 332, 506 S.E.2d 685 (1998).

Probable cause for arrest for violation. — In the absence of any signal visible in the darkness, a trooper had probable cause to stop the defendant's vehicle for a possible violation of O.C.G.A. § 40-6-123(b) and was not obligated to assume the defendant had vainly indicated such lane changes by means of hand and arm signals. *Mayfield v. State*, 186 Ga. App. 233, 566 S.E.2d 836 (1988).

When a police officer was stopped directly behind the defendant at a red stop signal, the fact that both vehicles were stopped prior to the defendant's turn did not obviate the need for the defendant to use the defendant's turn signal and, upon seeing defendant commit the offense, the officer was authorized to stop the defendant. *Trippe v. State*, 219 Ga. App. 250, 464 S.E.2d 655 (1995).

When the defendant, driving a car only five to seven feet in front of a police officer, violated O.C.G.A. § 40-6-123, probable cause existed to stop the vehicle, and the trial court erred as a matter of fact and law in holding the stop was pretextual. *State v. Reddy*, 236 Ga. App. 106, 511 S.E.2d 530 (1999).

In accordance with O.C.G.A. § 40-6-123, the defendant was required to use defendant's signal to alert the officers behind the defendant of the defendant's intention to turn right and, upon observing the defendant commit a traffic offense, the officers were authorized to stop the defendant. *Woodward v. State*, 245 Ga. App. 409, 537 S.E.2d 791 (2000).

Probable cause to stop vehicle. — Defendant was not illegally stopped under the Fourth Amendment because the deputy testified to observing the defendant improperly change lanes. *Tri Huynh v. State*, 239 Ga. App. 62, 518 S.E.2d 920 (1999).

When there was no dispute that the defendant turned right without signaling into the southbound lane of the road that the arresting deputy was preparing to turn onto, there was probable cause to stop the defendant's vehicle. *McBride v. State*, 246 Ga. App. 151, 539 S.E.2d 201 (2000).

Because a deputy testified that the driving the deputy observed was not "reasonably safe," and the trial court found the deputy credible, the deputy had a sufficiently specific basis to justify an initial traffic stop pursuant to O.C.G.A. § 40-6-123, and the trial court did not err in denying the defendant's motion to suppress evidence found in the car. *Salinas-Valdez v. State*, 276 Ga. App. 732, 624 S.E.2d 278 (2005).

Defendant unsuccessfully argued that a law enforcement officer lacked probable cause to make a stop because the officer caused the defendant to drive in an erratic, unsafe manner. What the testimony at the evidentiary hearing fairly showed was that the defendant, over a matter of seconds, attempted to make three lane changes, twice pulling into lanes occupied by other vehicles, causing one to brake and sound the vehicle's horn to avoid collision; the officer had probable cause to stop the defendant for the defendant's violations of O.C.G.A. §§ 40-6-48 and 40-6-123. *United States v. Pineda*, No. 1:06-cr-350-WSD, 2008 U.S. Dist. LEXIS 18137 (N.D. Ga. Mar. 10, 2008).

While the state failed to adduce direct evidence showing, at the moment the vehicle was at the subdivision's exit, the precise location of the cars that were later stopped in front of or behind the vehicle at the next intersection, a reasonable inference arose from the officer's testimony that the cars stopped at the stop sign with the vehicle had exited the nearby driveway at a time such that the driver of the vehicle defendant was riding in was required to signal the driver's intent to turn. Thus, the evidence obtained as a result of the traffic stop was admissible. *Morgan v. State*, 309 Ga. App. 740, 710 S.E.2d 922 (2011).

Defendant was properly stopped when the defendant turned off from a road-block without using a turn signal. The arresting

officer testified that the officer knew the officer could not stop the defendant for failing to employ a turn signal unless there were other cars behind the defendant, and that the officer specifically remembered other cars following closely behind the defendant when the defendant turned without a signal in violation of O.C.G.A. § 40-6-123. *Scandrett v. State*, 293 Ga. 602, 748 S.E.2d 861 (2013).

Underlying offense for vehicular homicide. — Trial court's failure to merge the defendant's convictions for driving recklessly and committing second degree vehicular homicide in violation of O.C.G.A. §§ 40-6-390 and 40-6-393, respectively, was not error for sentencing purposes as the reckless driving offense was not the underlying offense of the homicide, but rather, improper lane change was, in violation of O.C.G.A. § 40-6-123(a); further, pursuant to O.C.G.A. § 16-1-6, there was no factual merger because the crimes were committed sequentially and separately. *Cutter v. State*, 275 Ga. App. 888, 622 S.E.2d 96 (2005).

Summary judgment improper on issue of negligence. — Trial court erred in granting a driver summary judgment in a children's wrongful death action because the evidence was sufficient to create a genuine issue of material fact on the questions of whether the driver acted negligently and whether the driver's negligence was a concurring proximate cause of the collision that resulted in the death of

the children's father; a jury hearing the evidence could find that the driver failed to keep a proper lookout as the driver proceeded down the highway, made an unnecessarily sudden stop without warning as the driver approached the cross street, and was a concurring proximate cause of the collision that killed the father. *Hayes v. Crawford*, 317 Ga. App. 75, 730 S.E.2d 26 (2012).

Cited in *Cason v. Columbus*, 148 Ga. App. 208, 250 S.E.2d 836 (1978); *Allen v. State*, 150 Ga. App. 109, 257 S.E.2d 5 (1979); *Mathews v. Taylor*, 155 Ga. App. 2, 270 S.E.2d 247 (1980); *Hill v. Yara Eng'g Co.*, 157 Ga. App. 281, 277 S.E.2d 256 (1981); *Hunter v. Batton*, 160 Ga. App. 849, 288 S.E.2d 244 (1982); *Griffin v. Bremen Steel Co.*, 161 Ga. App. 768, 288 S.E.2d 874 (1982); *Morris v. DeLong*, 183 Ga. App. 124, 358 S.E.2d 285 (1987); *Neiswonger v. Janics*, 196 Ga. App. 607, 396 S.E.2d 553 (1990); *Corbin v. State*, 203 Ga. App. 297, 416 S.E.2d 848 (1992); *State v. Jones*, 214 Ga. App. 593, 448 S.E.2d 496 (1994); *Daniels v. State*, 222 Ga. App. 29, 473 S.E.2d 239 (1996); *Parker v. State*, 249 Ga. App. 530, 549 S.E.2d 154 (2001); *Noble v. State*, 283 Ga. App. 81, 640 S.E.2d 666 (2006); *Cuaresma v. State*, 292 Ga. App. 43, 663 S.E.2d 396 (2008); *Ray v. State*, 292 Ga. App. 575, 665 S.E.2d 345 (2008); *Stinson v. State*, 318 Ga. App. 351, 733 S.E.2d 390 (2012); *Jenkins v. Gaither*, No. 12-15631, 2013 U.S. App. LEXIS 20296 (11th Cir. Oct. 4, 2013), (Unpublished).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 242, 279.

C.J.S. — 60A C.J.S., Motor Vehicles, § 699 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Liability for accident arising from motorist's failure to give signal for right turn, 38 ALR2d 143.

Liability for accident arising from failure of motorist to give signal for left turn at intersection as against motor vehicle

proceeding in same direction, 39 ALR2d 15.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 ALR2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 ALR2d 103.

Motor vehicle accidents involving right turns from lane other than right-hand lane, 7 ALR3d 282.

Negligence or contributory negligence of motorist in failing to proceed in accor-

dance with turn signal given, 84 ALR4th 124.

40-6-124. Signals by hand and arm or signal lights.

(a) Any stop or turn signal when required in this chapter shall be given either by means of the hand and arm or by signal lights, except as otherwise provided in subsection (b) of this Code section.

(b) Any motor vehicle in use on a highway shall be equipped with, and a required signal shall be given by, signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds 24 inches or when the distance from the center of the top of the steering post to the rear limits of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle and also to any combination of vehicles. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 70; Code 1933, § 68A-605, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Requirements regarding brake lights and turn signals generally, §§ 40-8-25, 40-8-26.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this Code section.

No conflict between subsection (b) and § 40-8-26. — There is no conflict between O.C.G.A. § 40-8-26, which requires the maintenance in good order of signal devices on all motor vehicles, and subsection (b) of O.C.G.A. § 40-6-124, which excuses from that requirement vehicles of a certain size. *Stubbs v. State*, 193 Ga. App. 342, 387 S.E.2d 619 (1989).

Purpose of signals. — One purpose of giving a hand and arm signal upon stopping, starting, or turning an automobile is to command the attention of the drivers of other automobiles and to make the other drivers aware of the intentions of the driver signaling in order to avoid collisions. *Pfeifer v. Yellow Cab Co.*, 88 Ga. App. 221, 76 S.E.2d 225 (1953) (decided under former Code 1933, § 68-303).

Bus driver not exempted. — Driver of a bus was not exempted from the duty

of complying with the provisions of former Code 1933, § 68-303, requiring hand signals before starting, stopping, or turning. *Folds v. Auto Mut. Indem. Co.*, 55 Ga. App. 198, 189 S.E. 711 (1937) (decided under former Code 1933, § 68-303).

Operator of a bus who intended to stop or make a turn to the left or right was not relieved from the statutory obligation to extend the driver's arm horizontally as a warning or signal that the driver so intends by the fact that the driver's vehicle was equipped with a red and yellow flag which the driver could cause to extend horizontally on the left side of the driver's bus when the driver intended to stop or to make a turn. *Eidson v. Felder*, 69 Ga. App. 225, 25 S.E.2d 41 (1943) (decided under former Code 1933, § 68-303).

Signal requirements (hand and arm) of former Code 1933, § 68-303 were not superseded by a mechanical attachment on the vehicle placed there for the purpose of signaling to other users of the highway the intention of the driver to stop the driver's vehicle or make a turn.

Eidson v. Felder, 69 Ga. App. 225, 25 S.E.2d 41 (1943) (decided under former Code 1933, § 68-303).

Negligence per se. — Failure to comply with former Code 1933, § 68-303 was negligence per se. *Folds v. Auto Mut. Indem. Co.*, 55 Ga. App. 198, 189 S.E. 711 (1937) (decided under former Code 1933, § 68-303).

Legal meaning of left-turn signal is that the driver of the front vehicle is

warning drivers of following vehicles, when the blinker light is in operation, that it is the driver's intention to turn to the driver's left. To recognize a custom that the signal for left turn from the lead vehicle means an invitation to the following vehicle to pass is to give such signal a meaning in direct conflict with the meaning assigned the signal by express statutory law. *Arnold v. Chupp*, 93 Ga. App. 583, 92 S.E.2d 239 (1956).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 200.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 697, 698, 702.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Liability for accident arising from motorist's failure to give signal for right turn, 38 ALR2d 143.

Liability for accident arising from fail-

ure of motorist to give signal for left turn at intersection as against motor vehicle proceeding in same direction, 39 ALR2d 15.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 ALR2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 ALR2d 103.

40-6-125. Method of giving hand and arm signals.

All signals required by this article when given by hand and arm shall be given from the left side of the vehicle in the following manner and shall indicate as follows:

- (1) Left turn, hand and arm extended horizontally;
 - (2) Right turn, hand and arm extended upward;
 - (3) Stop or decrease speed, hand and arm extended downward.
- (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 71; Code 1933, § 68A-606, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303, are included in the annotations for this Code section.

Purpose of signals. — One purpose of giving a hand and arm signal upon stopping, starting, or turning an automobile is to command the attention of the drivers of other automobiles and to make the other

drivers aware of the intentions of the driver signaling in order to avoid collisions. *Pfeifer v. Yellow Cab Co.*, 88 Ga. App. 221, 76 S.E.2d 225 (1953) (decided under former Code 1933, § 68-303).

Bus driver not exempted. — Driver of a bus was not exempted from the duty of complying with the provisions of former Code 1933, § 68-303, requiring hand signals before starting, stopping, or turning.

Folds v. Auto Mut. Indem. Co., 55 Ga. App. 198, 189 S.E. 711 (1937) (decided under former Code 1933, § 68-303).

Failure to comply with former Code

1933, § 68-303 was negligence per se. Folds v. Auto Mut. Indem. Co., 55 Ga. App. 198, 189 S.E. 711 (1937) (decided under former Code 1933, § 68-303).

RESEARCH REFERENCES

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

Sudden or unsignaled stop or slowing of motor vehicle as negligence, 29 ALR2d 5.

Liability for accident arising from motorist's failure to give signal for right turn, 38 ALR2d 143.

Liability for accident arising from failure of motorist to give signal for left turn

at intersection as against motor vehicle proceeding in same direction, 39 ALR2d 15.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 ALR2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 ALR2d 103.

40-6-126. Central lane for turning.

Whenever a highway or roadway has a central lane in which traffic may enter from either direction for the purposes of making a left turn, no vehicle shall be driven into such central lane except for the purpose of making a left turn, and no vehicle shall enter into such central lane at a location which is more than 300 feet from the location where the vehicle will turn left across one or more lanes of oncoming traffic. No vehicle which has been driven into such a central lane shall be operated in such central lane for more than 300 feet. (Code 1981, § 40-6-126, enacted by Ga. L. 1997, p. 866, § 1.)

Cross references. — Driving on roadways laned for traffic, § 40-6-48.

JUDICIAL DECISIONS

Cited in Driscoll v. Walters, 267 Ga. App. 688, 600 S.E.2d 744 (2004).

ARTICLE 7

NEGOTIATING RAILROAD CROSSINGS, ENTERING HIGHWAYS FROM PRIVATE DRIVEWAYS

Cross references. — Regulation of railroad grade crossings, § 32-6-190 et seq.

40-6-140. Obedience to signal indicating approach of train; reasonable and prudent standard for crossing railroad grade.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing, such driver shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad and shall not proceed until he can do so safely, when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a train;

(2) A crossing gate is lowered or a human flagman gives or continues to give a signal of the approach of the passage of a train; or

(3) An approaching train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

(c) If no electric or mechanical signal device is giving warning of the immediate approach of a train, no crossing gate or barrier is closed, there is no stop sign at the crossing, and there is no human flagman giving warning, all drivers shall slow to a reasonable and prudent speed and verify that there is no approaching train prior to proceeding. For the purposes of this subsection, "a reasonable and prudent speed" means a speed slow enough to enable the driver to safely stop the vehicle prior to reaching the nearest rail of such crossing.

(d) No person shall drive a vehicle over a railroad grade crossing when a train is approaching.

(e) No person shall drive a vehicle over a railroad grade crossing if there is insufficient space to drive completely through the crossing without stopping.

(f) No person shall drive a vehicle over a railroad grade crossing if there is insufficient undercarriage clearance for the vehicle to negotiate the crossing. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 83; Code 1933, § 68A-701, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2003, p. 484, § 9.)

JUDICIAL DECISIONS

Construction of provisions. — Provisions of O.C.G.A. § 40-6-140 must be construed with provisions of Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see O.C.G.A.

§ 40-6-141). *Central of Ga. R.R. v. Sellers*, 129 Ga. App. 811, 201 S.E.2d 485 (1973).

Vehicle operator generally under no duty to stop and listen. — Ga. L.

1953, Nov.-Dec. Sess., p. 556 certainly puts a duty on the operator of a motor vehicle to look, but it puts no duty on the operator to listen and no duty to stop, unless there is a signaling device or unless the train is "plainly visible." *Atlantic Coast Line R.R. v. Hall Livestock Co.*, 116 Ga. App. 227, 156 S.E.2d 396 (1967).

Section's violation negligence per se. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 makes failure to use one's sense of sight and to stop under given circumstances the equivalent of negligence as a matter of law. *Atlantic Coast Line R.R. v. Hall Livestock Co.*, 116 Ga. App. 227, 156 S.E.2d 396 (1967).

As a jury could have determined that an employee for a tractor company was negligent per se pursuant to O.C.G.A. § 40-6-140(f) for driving a tractor-trailer over a railroad crossing, whereupon the tractor trailer got stuck due to insufficient undercarriage clearance, the jury's subrogation award to an insurer whose insured suffered damages from the inci-

dent was supported by the evidence as was the award of litigation expenses under O.C.G.A. § 13-6-11; accordingly, it was proper to deny a motion by the insurer for the tractor company, against which the judgment was entered, for judgment notwithstanding the verdict. *Universal Underwriters Group v. Southern Guar. Ins. Co.*, 297 Ga. App. 587, 677 S.E.2d 760 (2009).

Instructions to jury. — Trial court did not err in refusing to charge the jury that O.C.G.A. § 40-6-140 "puts a duty on the operator of a motor vehicle to look, but it puts no duty on him to listen and no duty to stop unless there is a signaling device or unless the train is 'plainly visible'"; the requested charge, while appropriate in a civil action, was not adjusted to the facts of a criminal case. *Decker v. State*, 217 Ga. App. 803, 459 S.E.2d 586 (1995).

Cited in *Travelers Ins. Co. v. Gaither*, 148 Ga. App. 251, 251 S.E.2d 66 (1978); *Terry v. Liberty Mut. Ins. Co.*, 152 Ga. App. 583, 263 S.E.2d 475 (1979).

RESEARCH REFERENCES

C.J.S. — 74 C.J.S., Railroads, § 786 et seq.

ALR. — Traveler's ignorance of existence of railroad crossing as affecting liability for injury, 40 ALR 1309.

Duty of automobilist to shut off motor at railroad crossing, 54 ALR 542.

40-6-141. Erection and observance of stop signs at railroad grade crossings.

The Department of Transportation and local authorities with the approval of the department are authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad and shall proceed only upon exercising due care. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 84; Ga. L. 1973, p. 947, § 2; Code 1933, § 68A-702, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1953, Nov.-Dec. Sess.,

pp. 556 and 594 are included in the annotations for this Code section.

Construction of provisions. — Provi-

sions of Ga. L. 1953, Nov.-Dec. Sess., pp. 556 and 593 (see O.C.G.A. § 40-6-141) must be construed with provisions of Ga. L. 1953, Nov.-Dec. Sess., pp. 556 and 594 (see O.C.G.A. § 40-6-140). Central of Ga.

R.R. v. Sellers, 129 Ga. App. 811, 201 S.E.2d 485 (1973) (decided under Ga. L. 1953, Nov.-Dec. Sess. pp. 556 and 594).
Cited in Georgia S. & Fla. Ry. v. Odom, 152 Ga. App. 664, 263 S.E.2d 469 (1979).

RESEARCH REFERENCES

ALR. — Failure to stop, look, and listen at railroad crossing as negligence per se, 1 ALR 203; 2 ALR 767; 41 ALR 405.

Duty of automobilist to shut off motor at railroad crossing, 54 ALR 54.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes, 72 ALR2d 6.

40-6-142. Certain vehicles to stop at all railroad crossings.

(a) Except as provided in subsection (b) of this Code section, the driver of any motor vehicle carrying passengers for hire, any bus, whether or not operated for hire, or of any school bus, whether carrying any school children or empty, or of any vehicle carrying any hazardous material listed in Section 392.10 of Title 49 of the Code of Federal Regulations as those regulations currently exist or as they may in the future be amended or in regulations adopted by the commissioner of public safety, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train and shall not proceed until he or she can do so safely. After stopping as required in this Code section and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where:

(1) Traffic is directed to proceed by a police officer, a firefighter, or a railroad flagman;

(2) A traffic-control signal directs traffic to proceed;

(3) The highway crosses an abandoned railroad track which is marked with a sign indicating its abandoned status, where such signs are erected by or under the direction of the local or state authority having jurisdiction over the highway; or

(4) The highway crosses an industrial siding or spur track marked "exempt," where such signs are erected by or under the direction of the local or state authority having jurisdiction over the highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 85; Code 1933, § 68A-703, enacted

by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1004, § 1; Ga. L. 2003, p. 484, § 10; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 334, § 18-3/HB 501.)

Cross references. — Duty of carriers of passengers to exercise extraordinary diligence, § 46-9-132.

JUDICIAL DECISIONS

Ga. L. 1953, Nov.-Dec. Sess., p. 556 places an absolute duty on drivers to stop, listen, and look. The duration of the stopping, listening, and looking must be sufficient to assure a reasonably prudent person that no train is approaching that will endanger that person's proceeding across the tracks safely. *Underwood v. Atlanta & W.P.R.R.*, 106 Ga. App. 467, 127 S.E.2d 318 (1962).

Railroads intended to benefit from

section. — Railroad falls within that class for whose benefit Ga. L. 1953, Nov.-Dec. Sess., p. 556 was enacted. *Atlanta & W.P.R.R. v. Underwood*, 218 Ga. 193, 126 S.E.2d 785 (1962).

Negligence per se. — Violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 would be negligence per se. *Underwood v. Atlanta & W.P.R.R.*, 106 Ga. App. 467, 127 S.E.2d 318 (1962).

RESEARCH REFERENCES

C.J.S. — 74 C.J.S., Railroads, § 786.

ALR. — Duty of automobilist to shut off motor at railroad crossing, 54 ALR 542.

40-6-143. Moving heavy equipment at railroad grade crossings.

(a) No person shall operate or move a crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten miles per hour or less or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this Code section.

(b) Notice of any such intended crossing shall be given to a station agency of such railroad and a reasonable time shall be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop it not less than 15 feet nor more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the

immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 86; Code 1933, § 68A-704, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Duty of automobilist to shut off motor at railroad crossing, 54 ALR 542.

40-6-144. Emerging from alley, driveway, or building.

The driver of a vehicle emerging from an alley, building, private road, or driveway within a business or residential district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance, road, or driveway or, in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon. The driver of a vehicle shall yield the right of way to any pedestrian on a sidewalk. Except as provided by resolution or ordinance of a local government for sidewalks within the jurisdiction of such local government authorizing the operation of bicycles on sidewalks by persons 12 years of age or younger, no person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized driveway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 88; Code 1933, §§ 68A-509, 68A-705, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2009, p. 65, § 7/SB 196.)

JUDICIAL DECISIONS

Cited in Hadden v. Owens, 154 Ga. App. 467, 268 S.E.2d 760 (1980); Noellien v. State, 298 Ga. App. 47, 679 S.E.2d 75 (2009); Money v. Daniel, 188 Ga. App. 215, 372 S.E.2d 305

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 302.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 822.

ARTICLE 8

SCHOOL BUSES

Cross references. — Accident insurance for children being transported by school bus, § 20-2-1090 et seq. Duty of drivers of school buses to stop at railroad

crossings, § 40-6-142. Equipment of school buses, § 40-8-110 et seq.

Administrative rules and regulations. — Public School Bus Inspection,

Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-30.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 68A-706 and 68-1667 are included in the annotations for this article.

Waiver of equipment standards. — There was no authority which would allow

a waiver of equipment standards enumerated in former Code 1933, §§ 68A-706 and 68-1667. 1977 Op. Att'y Gen. No. 77-43 (decided under former Code 1933, §§ 68A-706 and 68-1667).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 280.

Am. Jur. Proof of Facts. — Liability of School Bus Driver or School for Injury to Child Going to or from School Bus, 13 POF3d 475.

C.J.S. — 60A C.J.S., Motor Vehicles, § 719.

ALR. — Carrier's liability to person in street or highway for purpose of boarding its vehicle, 7 ALR2d 549.

40-6-160. Speed limits.

(a) Except as otherwise provided in subsection (b) of this Code section, it shall be unlawful to operate:

(1) A school bus transporting school children to and from school or to and from school activities at a speed greater than 40 miles per hour on a public road other than one which is a part of The Dwight D. Eisenhower System of Interstate and Defense Highways; or

(2) A school bus transporting school children to and from school or to and from school activities on a public road which is a part of The Dwight D. Eisenhower System of Interstate and Defense Highways at a speed greater than 55 miles per hour.

(b) When a school bus is transporting school children to or from an event or school activity or an express bus transporting students from one school to another school and is not loading or unloading children during such transportation, the speed limit shall be 55 miles per hour on other public roads as well as on those public roads which are a part of The Dwight D. Eisenhower System of Interstate and Defense Highways. (Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 2065, § 1; Ga. L. 1988, p. 540, § 1; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2785, § 23; Ga. L. 2000, p. 136, § 40.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

RESEARCH REFERENCES

ALR. — Liability of motorbus carrier or passenger struck by other vehicle, 16 driver for death of, or injury to, discharged ALR5th 1.

40-6-161. Headlights to be lit when transporting children; communication equipment required.

(a) It shall be unlawful to operate any school bus which is transporting children unless the headlights on such school bus are illuminated.

(b) It shall be unlawful to operate any school bus which is transporting children unless the driver of the bus is equipped with one or more devices to allow live communication between the driver and school officials or public safety officials or both. Such communication may be provided by two-way radio, cellular telephone, or any other device which provides similar communications capability. (Ga. L. 1964, p. 338, § 1; Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 1629, § 1.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

40-6-162. Use of visual signals.

A school bus driver shall actuate the visual signals required by Code Sections 40-8-111 and 40-8-115 whenever, but only whenever, the school bus is stopped on the highway for the purpose of receiving or discharging school children. A school bus driver shall not actuate the visual signals:

(1) At intersections or other places where traffic is controlled by traffic-control signals or police officers; or

(2) In designated school bus loading areas where the bus is entirely off the roadway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 89; Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

JUDICIAL DECISIONS

Intersection with stop sign. — an intersection with a stop sign. *Parker v. School bus driver* was authorized to actuate the flashers and stop arm of the bus at an intersection with a stop sign. *Parker v. State*, 228 Ga. App. 15, 491 S.E.2d 113 (1997).

40-6-163. Duty of driver of vehicle meeting or overtaking school bus; reporting of violations; enforcement.

(a) Except as provided in subsection (b) of this Code section, the driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop before reaching such school bus when there are in operation on the school bus the visual signals as specified in Code Sections 40-8-111 and 40-8-115, and such driver shall not proceed until the school bus resumes motion or the visual signals are no longer actuated.

(b) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway, or upon a controlled-access highway when the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(c) Every school bus driver who observes a violation of subsection (a) of this Code section is authorized and directed to record specifically the vehicle description, license number of the offending vehicle, and time and place of occurrence on forms furnished by the Department of Public Safety. Such report shall be submitted within 15 days of the occurrence of the violation to the local law enforcement agency which has law enforcement jurisdiction where the alleged offense occurred.

(d)(1) As used in this subsection, the term:

(A) "Owner" means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

(B) "Recorded images" means images recorded by a video recording device mounted on a school bus with a clear view of vehicles passing the bus on either side and showing the date and time the recording was made and an electronic symbol showing the activation of amber lights, flashing red lights, stop arms, and brakes.

(C) "Video recording device" means a camera capable of recording digital images showing the date and time of the images so recorded.

(2) Subsection (a) of this Code section may be enforced by using recorded images as provided in this subsection.

(3) For the purpose of enforcement pursuant to this subsection:

(A) The driver of a motor vehicle shall be liable for a civil monetary penalty if such vehicle is found, as evidenced by recorded images, to have been operated in disregard or disobedience of subsection (a) of this Code section and such disregard or disobedience was not otherwise authorized by law. The amount of such fine shall be \$300.00 for a first offense, \$750.00 for a second offense, and \$1,000.00 for each subsequent offense in a five-year period;

(B) The law enforcement agency authorized to enforce the provisions of this Code section shall send by regular mail addressed to the owner of the motor vehicle postmarked not later than ten days after the date of the alleged violation:

(i) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid;

(ii) An image taken from the recorded image showing the vehicle involved in the infraction;

(iii) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce this Code section and stating that, based upon inspection of recorded images, the owner's motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law;

(iv) A statement of the inference provided by subparagraph (D) of this paragraph and of the means specified therein by which such inference may be rebutted;

(v) Information advising the owner of the motor vehicle of the manner and time in which liability as alleged in the citation may be contested in court; and

(vi) A warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall waive any right to contest liability and result in a civil monetary penalty;

(C) Proof that a motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section shall be evidenced by recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of recorded images, a motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section and that such disregard or

disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(D) Liability under this subsection shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this subsection was operated in violation of subsection (a) of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(i) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation and identifies the name of the operator of the vehicle at the time of the alleged violation; or

(ii) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(4) A violation for which a civil penalty is imposed pursuant to this subsection shall not be considered a moving traffic violation for the purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil penalty pursuant to this subsection shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(5) If a person summoned by regular mail fails to appear on the date of return set out in the citation and has not paid the penalty for the violation or filed a police report or notarized statement pursuant to subparagraph (D) of paragraph (3) of this subsection, the person shall then be summoned a second time by certified mail with a return receipt requested. The second summons shall include all information required in subparagraph (B) of paragraph (3) of this subsection for the initial summons and shall include a new date of return. If a person summoned by certified mail again fails to appear on the date of return set out in the second citation and has failed to pay the penalty or file an appropriate document for rebuttal, the person summoned shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided in paragraph (3) of this subsection.

(6) Any court having jurisdiction over violations of subsection (a) of this Code section shall have jurisdiction over cases arising under this

subsection and shall be authorized to impose the civil monetary penalty provided by this subsection. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this subsection except as provided in subparagraph (A) of paragraph (3) of this subsection; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(7) Recorded images made for purposes of this subsection shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(8) A governing authority shall not impose a civil penalty under this subsection on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a peace officer for the same violation.

(9) A school system may enter into an intergovernmental agreement with a local governing authority to offset expenses regarding the implementation and ongoing operation of video recording devices serving the purpose of capturing recorded images of motor vehicles unlawfully passing a school bus.

(10) Any school bus driver operating a vehicle equipped with an activated video recording device shall be exempt from the recording provisions of subsection (c) of Code Section 40-6-163. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 89; Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 1175, § 1; Ga. L. 1986, p. 819, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 257, § 1/SB 57.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

JUDICIAL DECISIONS

Jury instruction. — After the plaintiff's vehicle was struck in the rear by the defendant's vehicle, the trial court did not err in refusing to charge on O.C.G.A. § 40-6-163(a) since no written request to charge this statute was submitted by the plaintiffs and the record reveals no evi-

dence of an oral request. *Gurly v. Hinson*, 194 Ga. App. 673, 391 S.E.2d 483 (1990).

Cited in *Parker v. State*, 228 Ga. App. 15, 491 S.E.2d 113 (1997); *Thomas v. State*, 261 Ga. App. 493, 583 S.E.2d 207 (2003); *Leachman v. State*, 286 Ga. App. 708, 649 S.E.2d 886 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Determination of actual driver unnecessary. — O.C.G.A. § 40-6-163, effec-

tive July 1, 1985, does not require the Department of Public Safety to attempt to

determine the actual driver of a vehicle owned by a governmental or business entity. 1985 Op. Att'y Gen. No. 85-56.

Notice to be given to registered owner. — If a vehicle has both a legal owner and a registered owner, the required notice should be sent to the registered owner. 1985 Op. Att'y Gen. No. 85-56.

Notice to prosecuting official upon second or subsequent warning letters. — Upon receipt of a report from a school bus driver that a person who has a previous warning letter regarding a violation of O.C.G.A. § 40-6-163 in the driver's driver record has again violated the provisions of that Code section, the Department of Public Safety should notify the prosecuting official responsible for prosecuting misdemeanors in the county in which the violation in the second report occurred. 1985 Op. Att'y Gen. No. 85-56.

Lanes separated by flush median. — On a highway where the traffic lanes are separated only by a flush median or a two-way left-turn lane so that the various parts of the highway are divided only by painted stripes, vehicles from either direction must stop for a stopped school bus displaying the bus' visual stop signals. 1989 Op. Att'y Gen. No. 89-20.

Highway separated by physical dividing median. — If a four-lane highway is separated by a grass strip or other physical dividing median, a driver approaching a school bus need not stop; however, if the four-lane highway is separated merely by a painted strip dividing the two directions, it would appear from the foregoing that a driver approaching the school bus would be required to stop. 1963-65 Op. Att'y Gen. p. 303.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application, of statute prescribing special precautions in passing stopped automobile, 108 ALR 987.

40-6-164. Duty of school bus driver stopping to allow children to disembark.

After stopping to allow children to disembark from the bus, it shall be unlawful for the driver of the school bus to proceed until all children who need to cross the roadway have done so safely. Any driver willfully violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1976, p. 479, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Cited in Georgia Farm Bureau Mut. Ins. Co. v. Greene, 174 Ga. App. 120, 329 S.E.2d 204 (1985).

40-6-165. Operation of school buses.

(a) Prior to moving a school bus from a stop at which passengers have been loaded or unloaded, the driver of the bus shall check all mirrors to ensure that it is safe to place the bus in motion.

(b) Prior to loading or unloading passengers from a school bus, the driver shall engage the parking brakes of the bus and shall not release such brakes until each passenger boarding the bus is on board and until

each passenger disembarking from the bus is off the roadway and safely on the pedestrian areas of the roadway.

(c) Prior to loading or unloading passengers from a school bus, the driver shall display the stop arm on the bus and shall not retract the stop arm until each passenger boarding the bus is on board and until each passenger disembarking from the bus is off the roadway and safely on the pedestrian areas of the roadway.

(d) The driver of a school bus shall not use or operate a cellular telephone or two-way radio while loading or unloading passengers.

(e) The driver of a school bus shall not use or operate a cellular telephone while the bus is in motion.

(f) The driver of a school bus shall instruct all passengers exiting the bus of the proper procedures of crossing the roadway in front of the bus only.

(g) The driver of a school bus shall ensure that the red flasher lights on the bus remain illuminated and flashing until all passengers have boarded or have exited the bus and have safely crossed the roadway and are safely on the pedestrian areas of the roadway.

(h) The driver of a school bus shall extend the extension arm or gate on the front of the bus until all passengers have boarded or have exited the bus and have safely crossed the roadway and are safely on the pedestrian areas of the roadway. (Code 1981, § 40-6-165, enacted by Ga. L. 2004, p. 621, § 7.)

Cross references. — Training of school bus drivers, § 20-2-1125.

Editor's notes. — Ga. L. 2004, p. 621, § 5, not codified by the General Assembly,

provides: "This part [consisting of §§ 5-8 of the Act] shall be known and may be cited as 'Aleana's Law.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur 2d, Automobiles and Highway Traffic, § 307.

C.J.S. — 60A C.J.S., Motor Vehicles, § 870.

ARTICLE 9

SPEED RESTRICTIONS

JUDICIAL DECISIONS

Motorist may be tried and convicted in two counties for speeding.

— When a motorist is charged with speeding and driving under the influence in two counties, the motorist may be tried and convicted in both counties for speeding,

but a conviction for driving under the influence in one county will bar prosecution in the other as this charge arises out of the same conduct in both counties. *State v. Willis*, 149 Ga. App. 509, 254 S.E.2d 743 (1979).

Cited in *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Prosecuting legislators for speeding violations. — There is no constitutional immunity for members of the General Assembly from prosecution for

speeding violations or other violations of the criminal law. 1985 Op. Att’y Gen. No. U85-50.

RESEARCH REFERENCES

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 ALR 459; 23 ALR 418.

Driving automobile at a speed which prevents stopping within length of vision as negligence, 44 ALR 1403; 58 ALR 1493; 87 ALR 900; 97 ALR 546.

Excessive speed of automobile as affecting question whether excavation or other defect in highway is the proximate cause of accident, 82 ALR 294.

Inference or presumption that owner of motor vehicle was its driver at time of traffic, driving, or parking offense, 49 ALR2d 456.

Meaning of “residence district,” “business district,” “school area,” and the like,

in statutes and ordinances regulating speed of motor vehicles, 50 ALR2d 343.

Construction, application, and effect, in civil motor vehicle accident cases, of “slow speed” traffic statutes prohibiting driving at such a slow speed as to create danger, to impede normal traffic movement, or the like, 66 ALR2d 1194.

Custom or practice of drivers of motor vehicles as affecting question of negligence, 77 ALR2d 1327.

Speed, alone or in connection with other circumstances, as gross negligence, wantonness, recklessness, or the like, under automobile guest statute, 6 ALR3d 769.

Legal aspects of speed bumps, 60 ALR4th 1249.

40-6-180. Basic rules.

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. Consistently with the foregoing, every person shall drive at a reasonable and prudent speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching and traversing a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 48; Code 1933, § 68A-801, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

PROCEDURE

GOVERNED AREA

JURY ISSUES AND INSTRUCTIONS

APPLICATION

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770 and former Code 1933, § 68-301 are included in the annotations for this Code section.

Constitutionality. — While O.C.G.A. § 40-6-180 standing alone does not meet the constitutional certainty requirements of the due process clause, that statute furnishes sufficient criteria to meet constitutional criteria when read in conjunction with O.C.G.A. § 40-6-181. *Bilbrey v. State*, 254 Ga. 629, 331 S.E.2d 551 (1985).

Requirements for valid indictment, accusation, or citation. — For an indictment, accusation, or citation to meet due process standards in too-fast-for-conditions cases where the accused is traveling slower than the maximum limit in O.C.G.A. § 40-6-181, it must allege the speed of the vehicle and the hazard or condition which made that speed “greater than is reasonable and prudent under the conditions.” *Bilbrey v. State*, 254 Ga. 629, 331 S.E.2d 551 (1985).

Negligence per se. — Violation of O.C.G.A. § 40-6-180 is negligence per se. *Parr v. Pinson*, 182 Ga. App. 707, 356 S.E.2d 740 (1987).

“Failure to keep vehicle under control.” — Accusation charging the defendant with “failure to keep vehicle under control” would not put the defendant on notice to appear prepared to defend oneself as to the offense of driving “too fast for conditions.” *Cottongim v. City of East Point*, 167 Ga. App. 21, 306 S.E.2d 30 (1983).

Since the year 1975, the offense of “failure to keep vehicle under control” has been nonexistent. *Cottongim v. City of East Point*, 167 Ga. App. 21, 306 S.E.2d 30 (1983).

“Actual and potential hazards then existing” under O.C.G.A. § 40-6-180 include pedestrians or other traffic in the roadway. *Hamby v. State*, 256 Ga. App. 886, 570 S.E.2d 77 (2002).

Driver must reduce speed in approaching intersection. — Driver must reduce the speed of a driver's vehicle in approaching an intersection so as to bring the vehicle's immediate control within the driver's power and render the vehicle safe

to go into the intersection at the reduced rate of speed. *Smith v. Hardy*, 144 Ga. App. 168, 240 S.E.2d 714 (1977).

Evidence showing that both a police officer and the defendant were forced to take evasive action to avoid a collision was sufficient to support the conclusion that the defendant was not operating the defendant's vehicle at a reasonable speed upon approaching an intersection. *Bass v. State*, 185 Ga. App. 666, 365 S.E.2d 509 (1988).

Cancellation not required for conviction for driving too fast. — Conviction for driving too fast for conditions is not a conviction which singularly, or in combination with any other offense or offenses, statutorily requires the cancellation, suspension, or revocation or authorizes a court or the department to impose suspension or revocation of a driver's license. *Hardison v. Shepard*, 246 Ga. 196, 269 S.E.2d 458 (1980).

Circumstantial evidence on speed. — Although evidence may be entirely circumstantial as to the rate of speed of an automobile, it may be sufficient to support a reasonable conclusion reached by the jury on the issue of negligence. *Smith v. Hardy*, 144 Ga. App. 168, 240 S.E.2d 714 (1977).

Evidence of the force of the impact of a collision, or as to the distance which the automobile that caused the injury traveled from the point of the collision until the vehicle stopped, may of itself, and in connection with other circumstances, be sufficient to warrant a finding of the jury of negligence as to speed. *Smith v. Hardy*, 144 Ga. App. 168, 240 S.E.2d 714 (1977).

Purpose of section. — Purpose of former Code 1910, § 1770(5) was to protect pedestrians and others lawfully on the highways of this state against the consequences of the negligent and improper operation of automobiles. *Elsbery v. State*, 12 Ga. App. 86, 76 S.E. 779 (1912) (decided under former Code 1910, § 1770(5)).

Section's general penal provision incapable of enforcement. — So much of former Code 1910, § 1770(5) as undertakes to make penal the operation of an automobile on one of the highways of this state at a rate of speed greater than was reasonable and proper, having regard to

General Consideration (Cont'd)

the traffic and use of the highway, or so as to endanger the life or limb of any person or the safety of any property, was too uncertain and indefinite in its terms to be capable of enforcement. *Hayes v. State*, 11 Ga. App. 371, 75 S.E. 523 (1912); *Holland v. State*, 11 Ga. App. 769, 76 S.E. 104 (1912); *Carter v. State*, 12 Ga. App. 430, 78 S.E. 205 (1913) (decided under former Code 1910, § 1770(5)).

Misdemeanor provision enforceable. — So much of former Code 1910, § 1770(5) as makes it a misdemeanor to operate an automobile at a rate of speed greater than six miles per hour upon approaching a crossing of intersecting highways was sufficiently definite and certain in the statute's terms to be capable of enforcement. *Hayes v. State*, 11 Ga. App. 371, 75 S.E. 523 (1912); *Empire Life Ins. Co. v. Allen*, 141 Ga. 413, 81 S.E. 120 (1914) (decided under former Code 1910, § 1770(5)).

Former Civil Code 1910, § 1770(5) was sound as a rule of civil conduct. *Quarles v. Gem Plumbing Co.*, 18 Ga. App. 592, 90 S.E. 92 (1916) (decided under former Code 1910, § 1770(5)).

Violation of section negligence. — It is negligence to run the machine at a greater rate of speed than six miles per hour as provided in former Civil Code 1910, § 1770(5) and without giving the warning which the law requires. *Fuller v. Inman*, 10 Ga. App. 690, 74 S.E. 287 (1912) (decided under former Code 1910, § 1770(5)).

Section not different from ordinary care rule. — Indeed, in most respects, it is not greatly different from the rule of ordinary care which would apply in the absence of a statute. *Strickland v. Whatley*, 142 Ga. 802, 83 S.E. 856 (1914) (decided under former Code 1910, § 1770(5)).

Statutory duties are cumulative. — Statutory duties are cumulative, and do not destroy the common-law duties of drivers of automobiles relative to persons and property using the highway. The duty at common law of a driver of an automobile, relative to persons and property on the highway, is to exercise ordinary care to

avoid injuring them. What will amount to ordinary care will depend upon the circumstances of the case. *Giles v. Voiles*, 144 Ga. 853, 88 S.E. 207 (1916) (decided under former Code 1910, § 1770(5)).

Persons other than pedestrians protected. — Former Civil Code 1910, § 1770(5) was sufficiently clear and definite in the statute's terms as to persons and property protected, and did not provide that the only persons intended to be protected are pedestrians. *Holland v. State*, 11 Ga. App. 769, 76 S.E. 104 (1912) (decided under former Code 1910, § 1770(5)).

Section exhaustive in scope. — Former Code 1910, § 1770(3) should be exhaustive of entire subject of regulating speed of auto vehicles and automobiles, and should operate as a substitute for former Code 1910, § 1770(5). *Hardy v. State*, 25 Ga. App. 287, 103 S.E. 267 (1920) (decided under former Code 1910, § 1770(30)).

Former Code 1910, § 1770(30) was unconstitutional. *Jones v. State*, 151 Ga. 502, 107 S.E. 765 (1921) (decided under former Code 1910, § 1770(30)).

Intersecting streets. — Former Civil Code 1910, § 1770(51) did not apply to intersecting streets of a city, and any contrary ruling is overruled. *Shannon v. Martin*, 164 Ga. 872, 139 S.E. 671, 54 A.L.R. 1246 (1927) (decided under former Code 1910, § 1770(51)).

Section cumulative to common law. — Former Civil Code 1910, § 1770(51) imposed certain statutory duties upon drivers of automobiles with reference to persons and property using the highway. These are cumulative and do not destroy the common-law duties of drivers relative to such persons and property using the highway. At common law, the driver owes the duty to exercise ordinary care to avoid injury. *Davies v. West Lumber Co.*, 32 Ga. App. 460, 123 S.E. 757 (1924) (decided under former Code 1910, § 1770(51)).

"Immediate control" construed. — "Immediate control" does not mean speed enabling an operator to bring a vehicle to a stop "within vision" of a railroad crossing or short curve, and this without reference as to whether the weather was clear or rainy. *Central of Ga. Ry. v. Burton*, 33

Ga. App. 199, 125 S.E. 868 (1924) (decided under former Code 1910, § 1770(51)).

Section furnishes rule of civil conduct. — Portion of former Code 1933, § 68-301 which provided that no person should operate a motor vehicle upon any public street or highway at a speed greater than was reasonable and safe, having regard to the conditions then existing, was too indefinite to be capable of enforcement, but not too indefinite to furnish a rule of civil conduct. *Willis v. Jones*, 89 Ga. App. 824, 81 S.E.2d 517 (1954) (decided under former Code 1933, § 68-301).

Whether driver grossly negligent determined by jury. — Former subsection (a) of former Code 1933, § 68-301, providing that no person should operate a motor vehicle upon any public street or highway at a speed greater than was reasonable and safe, having due regard to the conditions then existing, did not define any speed as being "greater than is reasonable and safe," and whether or not the driver was grossly negligent in operating the automobile at a dangerous rate of speed, under the conditions and circumstances alleged, was an issue of fact which should be determined by a jury. *Carpenter v. Lyons*, 78 Ga. App. 214, 50 S.E.2d 850 (1948) (decided under former Code 1933, § 68-301).

It was not error for a court to charge former Code 1933, § 68-301 as: there were allegations to the effect that under the circumstances a violation of applicable speed laws was gross negligence; it was not charged that a violation of the speed laws in itself was gross negligence when "gross negligence" was defined by the judge in the judge's charge to the jury; and it was made clear to the jury that recovery must be predicated on a finding of gross negligence on the part of the driver of the automobile. *Kimberly v. Reed*, 79 Ga. App. 137, 53 S.E.2d 208 (1949) (decided under former Code 1933, § 68-301).

Exercise of due care required. — All drivers of vehicles using the highways are held to the exercise of due care. *Harper v. Plunkett*, 122 Ga. App. 63, 176 S.E.2d 187 (1970) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Negligence per se. — While a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556

has been called negligence per se, before a negligent act can be found to be negligence per se, a finding of ordinary negligence must in reality first be made. *Dowis v. McCurdy*, 109 Ga. App. 488, 136 S.E.2d 389, cert. dismissed, 220 Ga. 415, 139 S.E.2d 294 (1964) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

To find violation is negligence per se, finding of common-law negligence must first be made. *Palmer v. Stevens*, 115 Ga. App. 398, 154 S.E.2d 803 (1967) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Violation by a driver of Ga. L. 1953, Nov.-Dec. Sess., p. 556 is negligence per se, and this is true whether the negligence charged is ordinary negligence or gross negligence. *Wright v. Dilbeck*, 122 Ga. App. 214, 176 S.E.2d 715 (1970). But see *CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 9 F. Supp. 2d 1374 (N.D. Ga. 1998), aff'd, 182 F.3d 788 (11th Cir. 1999) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

No absolute duty on driver to avoid a collision. — All the circumstances and conditions at the time and place, including the conduct of other drivers, must be taken into account. *Flanigan v. Reville*, 107 Ga. App. 382, 130 S.E.2d 258 (1963) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Neither Ga. L. 1953, Nov.-Dec. Sess., p. 556, nor any other provision of law, places an absolute duty on any driver to avoid a collision. *Malcom v. Malcolm*, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

No absolute duty is imposed by Ga. L. 1953, Nov.-Dec. Sess., p. 556 upon the driver of a following vehicle to avoid colliding with the automobile immediately ahead of that driver, by the control of speed or otherwise, but all the facts and circumstances are to be taken into consideration so it may be determined where the negligence lies. *Harper v. Plunkett*, 122 Ga. App. 63, 176 S.E.2d 187 (1970) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Legal position of leading vehicle. — Leading vehicle has no absolute legal position superior to that of vehicle following. *Malcom v. Malcolm*, 112 Ga. App. 151, 144

General Consideration (Cont'd)

S.E.2d 188 (1965) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Speed to be controlled with regard to all highway conditions. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 requires that a driver shall control the driver's speed with regard to all conditions of highway. *Atlanta Metallic Casket Co. v. Hollingsworth*, 104 Ga. App. 154, 121 S.E.2d 388 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Reduced speed required in approaching intersection. — Driver must reduce speed in approaching an intersection to bring the vehicle's immediate control within the driver's power and render the vehicle safe to go into the intersection at the reduced rate of speed. *Wells v. Alderman*, 117 Ga. App. 724, 162 S.E.2d 18 (1968) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Reasonable and prudent speed standard. — Gist of violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 is driving at speed greater than is reasonable and prudent under all the circumstances. *Phillips v. Howard*, 109 Ga. App. 404, 136 S.E.2d 473 (1964) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Informant's tip provided police with additional basis to observe and stop defendant. — Trial court did not err in denying the defendant's motion to suppress, despite a claim that an informant used to apprehend the defendant was not previously known to police and had never provided any information until helping in the prosecution of the defendant, because the informant's tip predicted some aspects of the defendant's future behavior and contained information not available to the general public that was corroborated by the observations of officers; moreover, the defendant's reckless driving and flight from a congested parking lot, which caused a short high-speed chase to ensue, and the fact that the police learned that the defendant often carried a gun, provided the officers with an additional basis to stop the defendant and make an arrest. *Patton v. State*, 287 Ga. App. 18, 650 S.E.2d 733 (2007).

Cited in *Gilbert v. Parks*, 140 Ga. App. 550, 231 S.E.2d 391 (1976); *Dozier v.*

Brackett, 148 Ga. App. 110, 251 S.E.2d 101 (1978); *Dunn v. Dunn*, 150 Ga. App. 592, 258 S.E.2d 274 (1979); *Maddox v. Thomas*, 151 Ga. App. 477, 260 S.E.2d 355 (1979); *Reed v. Dixon*, 153 Ga. App. 604, 266 S.E.2d 286 (1980); *Exum v. Long*, 157 Ga. App. 592, 278 S.E.2d 13 (1981); *Avant Trucking Co. v. Stallion*, 159 Ga. App. 198, 283 S.E.2d 7 (1981); *Mercer v. Burnette*, 662 F.2d 706 (11th Cir. 1981); *Walker v. State*, 163 Ga. App. 638, 295 S.E.2d 574 (1982); *U-Haul Co. v. Ford*, 171 Ga. App. 744, 320 S.E.2d 868 (1984); *Harper v. Dooley*, 221 Ga. App. 715, 472 S.E.2d 461 (1996); *Worthy v. Kendall*, 222 Ga. App. 324, 474 S.E.2d 627 (1996); *Thomas v. CSX Transp., Inc.*, 233 Ga. App. 178, 503 S.E.2d 662 (1998); *Stokes v. Cantrell*, 238 Ga. App. 741, 520 S.E.2d 248 (1999); *Moore v. Pitt-DesMoines, Inc.*, 245 Ga. App. 676, 538 S.E.2d 155 (2000); *State v. Lockett*, 259 Ga. App. 179, 576 S.E.2d 582 (2003); *King v. State*, 262 Ga. App. 37, 584 S.E.2d 652 (2003); *Smith v. State*, 270 Ga. App. 759, 608 S.E.2d 35 (2004); *Purvis v. Steve*, 284 Ga. App. 116, 643 S.E.2d 380 (2007); *Heller v. City of Atlanta*, 290 Ga. App. 345, 659 S.E.2d 617 (2008).

Procedure

Indictment based on section incapable of enforcement. — An indictment charging the defendant with a misdemeanor in driving and operating a truck on a public highway in such a manner as to endanger the lives and property of certain named persons due to the circumstances and conditions by driving the truck at excessive speed back and forth across the road was too indefinite in the indictment's terms to be capable of enforcement. *Phillips v. State*, 60 Ga. App. 622, 4 S.E.2d 698 (1939) (decided under former Code 1910, § 1770(30)).

General allegation of negligence good against demurrer. — An allegation that the defendant was negligent in operating an automobile at a rate of speed greater than was reasonable and safe in violation of former Code 1933, § 68-301 was good as against general demurrer. *Eubanks v. Akridge*, 91 Ga. App. 243, 85 S.E.2d 502 (1954) (decided under former Code 1933, § 68-301).

Venue. — In the absence of constitutional or statutory provisions to the contrary, a criminal offense under former Code 1933, § 68-301 must be prosecuted in the county or district in which the offense was committed, unless the venue was changed. *Hall v. State*, 73 Ga. App. 616, 37 S.E.2d 545 (1946) (decided under former Code 1933, § 68-301).

Nonresident not amenable to service. — Former state resident who is nonresident when service is attempted is not amenable to service. *Parham v. Edwards*, 346 F. Supp. 968 (S.D. Ga. 1972), *aff'd*, 470 F.2d 1000 (5th Cir. 1973) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Governed Area

Every public thoroughfare is a "highway." — Every thoroughfare which is used by the public and is common to all the public, and which the public has the right to use, is a "highway." *Southern Ry. v. Combs*, 124 Ga. 1004, 53 S.E. 508 (1906); *Hines v. Wilson*, 25 Ga. App. 63, 102 S.E. 646, cert. denied, 25 Ga. App. 840, (1920) (decided under former Code 1910, § 1770(5)).

"Crossing of intersecting highways" construed. — Street or highway extending to, but not beyond, another highway, crosses and intersects such highway within the meaning of former Code 1910, § 1770(5). *Hayes v. State*, 11 Ga. App. 371, 75 S.E. 523 (1912) (decided under former Code 1910, § 1770(5)).

"Crossing of intersecting highways" is an intersection or meeting of public thoroughfares as distinguished from private ways. *Laing v. Perryman*, 31 Ga. App. 239, 120 S.E. 646 (1923) (decided under former Code 1910, § 1770(5)).

"Descent" defined. — Construing the word "descent," as used in former Code 1910, § 1770(5), in the light of the statutory context and the declared purpose of that section, it will be held to mean a declivity in the highway over which, from ordinary human experience and observation, it would be deemed more dangerous to operate an automobile at an excessive rate of speed than upon level ground. *Elsbery v. State*, 12 Ga. App. 86, 76 S.E.

779 (1912) (decided under former Code 1910, § 1770(5)).

Railroads. — Provisions of former Civil Code 1910, § 1770(51) applied to railroad crossings in a city. *Atlanta & W.P.R.R. v. West*, 38 Ga. App. 300, 143 S.E. 785 (1928) (decided under former Code 1910, § 1770(51)).

No exception for police on sharp curve speed limitations. — Speed limitation of motor vehicles approaching sharp curve contains no exception in favor of police officers. *Hudson v. Carton*, 37 Ga. App. 634, 141 S.E. 222 (1928) (decided under former Code 1910, § 1770(51)).

"Intersection" construed. — Term "intersection" is not limited to intersecting highways. *Atlanta Metallic Casket Co. v. Hollingsworth*, 104 Ga. App. 154, 121 S.E.2d 388 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Jury Issues and Instructions

Court need not charge jury with statute in its entirety. — Conviction for driving too fast for conditions need not be reversed because the trial court failed to charge the jury with O.C.G.A. § 40-6-180 in the statute's entirety, as the first sentence of the statute was a correct statement of the new law and did not exclude any elements of the offense charged. *Davis v. State*, 172 Ga. App. 710, 324 S.E.2d 559 (1984).

Jury charge not precluded by fact speed within posted limit. — Fact that a driver's rate of speed is within the posted speed limit at the scene of a collision does not preclude a jury charge on Ga. L. 1975, p. 582, § 1 (see O.C.G.A. § 40-6-180). *Cohran v. Douglasville Concrete Prods., Inc.*, 153 Ga. App. 8, 264 S.E.2d 507 (1980).

Even assuming that the defendant was traveling within the posted speed limit prior to and at the time of a collision, the propriety of the charge to the jury on traveling too fast for conditions is unaffected. *Keenan v. State*, 168 Ga. App. 51, 308 S.E.2d 26 (1983); *Franklin v. Hennrich*, 196 Ga. App. 372, 395 S.E.2d 859 (1990).

Jury instruction upheld. — In action for injuries sustained by plaintiff when the plaintiff was thrown from the defen-

Jury Issues and Instructions (Cont'd)

dant's truck's running board, where plaintiff had been standing at the defendant's request to keep the truck from toppling over as defendant drove the truck out of a ditch, since the direct and circumstantial evidence authorized the finding that the truck was being operated in the public road at the time the plaintiff contends the plaintiff was injured, an instruction with reference to the violations of the sections regulating the driving of automobiles on public roads was justified. *Bramlett v. Hulsey*, 98 Ga. App. 39, 104 S.E.2d 614 (1958).

Charge which states that no person shall drive a vehicle on a street or highway at a speed greater than is reasonable and prudent under the conditions, and having regard to the actual and potential hazards then existing; that in every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal compliance and the duty of all persons to use due care is proper. *Bowen v. State*, 100 Ga. App. 487, 111 S.E.2d 651 (1959).

Court did charge that portion of Ga. L. 1957, Nov.-Dec. Sess., p. 556 as follows: "In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway," which was proper, in that the petition charged negligence per se "in failing to slow speed of his vehicle to avoid colliding with petitioner." *Collins v. Porterfield*, 102 Ga. App. 294, 116 S.E.2d 105 (1960).

Trial court did not err in instructing the jury that Ga. L. 1975, p. 1582, § 1 (see O.C.G.A. § 40-6-180) does not define precisely what constitutes driving at a prudent speed and merely furnishes a general rule of conduct. *Forehand v. Pace*, 146 Ga. App. 682, 247 S.E.2d 192 (1978).

Trial court properly charged the jury on the parties' duty under O.C.G.A. § 40-6-180 that every person was required to drive at a reasonable and prudent speed when approaching and crossing an intersection and, thus, the trial court did not err in not giving the charge

on the same subject requested by the injured driver and spouse. *Hefner v. Maiorana*, 259 Ga. App. 176, 576 S.E.2d 580 (2003).

Jury instruction properly denied.

— Trial court did not err in refusing to give a requested jury charge containing references to several situations or conditions the existence of which was not reasonably raised by the evidence, including a non-existing railroad crossing and speculative references to special pedestrian hazards. *Campbell v. Cozad*, 207 Ga. App. 175, 427 S.E.2d 515 (1993).

Trial court properly refused to give a requested charge which simply quoted O.C.G.A. § 40-6-180 and contained matters irrelevant to the evidence presented in the case. *Shilliday v. Dunaway*, 220 Ga. App. 406, 469 S.E.2d 485 (1996).

Duty of jury in case involving pedestrian collision. — It is for the jury to determine, from the evidence, in any case of a collision between an automobile and a pedestrian, whether it was the duty of the driver to have stopped the automobile, whether the driver endeavored to do so, and whether the failure to stop in the particular case was due to negligence. *O'Dowd v. Newnham*, 13 Ga. App. 220, 80 S.E. 36 (1913) (decided under former Code 1910, § 1770(5)).

Jury charge upheld. — Charge of the court, "if this chauffeur was driving the automobile, as it approached N. street, at a greater rate of speed than six miles an hour, that would, by virtue of the law itself, constitute negligence," is a correct statement of the law. *Ware v. Lamar*, 16 Ga. App. 560, 85 S.E. 824 (1915); *Ware v. Lamar*, 18 Ga. App. 673, 90 S.E. 364 (1916) (decided under former Code 1910, § 1770(5)).

For a proper charge under the evidence on the speed approaching a crossing, see *Elberton & E.R.R. v. Thornton*, 32 Ga. App. 259, 122 S.E. 795 (1924) (decided under former Code 1910, § 1770(5)).

Error to charge that ordinary care requires ability to stop instantly. — It would have been error under former Code 1910, § 1770(5) for the judge to say in the judge's charge that ordinary care in crossing a railroad should have included the additional element of ability to stop the

automobile instantly. *Davis v. Whitcomb*, 30 Ga. App. 497, 118 S.E. 488 (1923); *Elberton & E.R.R. v. Thornton*, 32 Ga. App. 259, 122 S.E. 795 (1924) (decided under former Code 1910, § 1770(5)).

Jury instruction upheld. — Trial court did not err in instructing the jury that the law requires motor vehicles while in use upon the public streets to be equipped with efficient and serviceable brakes, and that the operation of the truck without that equipment along the public streets constituted negligence per se. *Orange Crush Bottling Co. v. Smith*, 35 Ga. App. 92, 132 S.E. 259 (1926) (decided under former Code 1910, § 1770(51)).

Charge to the effect that whenever the operator of any vehicle along a public highway shall meet a vehicle approaching from an opposite direction, the operator of the first vehicle shall turn to the right was held applicable to the conduct of the plaintiff. *Hornbrook v. Reed*, 35 Ga. App. 425, 133 S.E. 264 (1926) (decided under former Code 1910, § 1770(51)).

Whether driver grossly negligent determined by jury. — Former subsection (a) of former Code 1933, § 68-301, providing that no person should operate a motor vehicle upon any public street or highway at a speed greater than was reasonable and safe, having due regard to the conditions then existing, did not define any speed as being "greater than is reasonable and safe," and whether or not the driver was grossly negligent in operating the automobile at a dangerous rate of speed, under the conditions and circumstances alleged, was an issue of fact which should be determined by a jury. *Carpenter v. Lyons*, 78 Ga. App. 214, 50 S.E.2d 850 (1948) (decided under former Code 1933, § 68-301).

It was not error for a court to charge former Code 1933, § 68-301 as: there were allegations to the effect that under the circumstances a violation of applicable speed laws was gross negligence; it was not charged that a violation of the speed laws in itself was gross negligence when "gross negligence" was defined by the judge in the judge's charge to the jury and it was made clear to the jury that recovery must be predicated on a finding of gross negligence on the part of the driver of the

automobile. *Kimberly v. Reed*, 79 Ga. App. 137, 53 S.E.2d 208 (1949) (decided under former Code 1933, § 68-301).

Determination of reasonable and prudent speed for jury. — It is jury question as to whether the defendant was driving at a reasonable and prudent speed at the time of a collision. *Hill v. Rosser*, 102 Ga. App. 776, 117 S.E.2d 889 (1960) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Determination of the reasonableness of speed is necessarily for the jury. *Phillips v. Howard*, 109 Ga. App. 404, 136 S.E.2d 473 (1964) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Jury question as to exercise of reasonable diligence. — Evidence was sufficient to present a jury question as to whether the defendant exercised reasonable diligence under the circumstances and did not demand a finding that the plaintiff was negligent in driving 40 miles per hour through the weather conditions that prevailed at the time of the collision. *Ellison v. Robinson*, 96 Ga. App. 882, 101 S.E.2d 902 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Consideration of conditions in each case by jury. — Jury should consider the conditions obtaining in each case in determining whether there should have been a further slowing on approaching an intersection to render the speed "appropriate." Traffic rules and traffic control must be sensible and realistic. *Wells v. Alderman*, 117 Ga. App. 724, 162 S.E.2d 18 (1968) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Application

Summary judgment appropriate. — When the plaintiff testified that the defendant was driving safely, had control over the vehicle both were riding in prior to the accident, admitted there was nothing defendant could have done to avoid an on-coming car other than to swerve off the road and hit a parked car from which the plaintiff received injuries, and answered in the negative when asked if the defendant had done anything wrong relative to the accident, summary judgment was appropriate. *Hendrix v. Sexton*, 223 Ga. App. 466, 477 S.E.2d 881 (1996).

Application (Cont'd)**Necessity for jury to specify offense serving as foundation for finding.** —

After the jury found the appellant guilty of three misdemeanors — driving too fast for conditions, improper driving, and driving under the influence of alcohol so as to make the driver a less safe driver — but the jury did not reveal which of the included offenses served as the jury's foundation for finding the defendant to have been a less safe driver, the defendant's convictions for both included offenses had to be stricken, and the defendant could not be sentenced for either of the included offenses. *Howard v. State*, 182 Ga. App. 403, 355 S.E.2d 772 (1987).

Sufficient evidence to show unsafe speed. —

When the evidence was sufficient to authorize a finding that the defendant drove the defendant's parents' vehicle at a speed greater than was reasonable and prudent under conditions existing at the time of the collision, the trial court did not err in failing to grant a new trial on the plaintiff's claims against the defendants. *Thompson v. Hardy Chevrolet-Pontiac-Buick, Inc.*, 203 Ga. App. 499, 417 S.E.2d 358 (1992).

Evidence was sufficient to convict the defendant of driving too fast for conditions pursuant to O.C.G.A. § 40-6-180 and vehicular homicide based on the violation since the defendant: (1) was speeding; (2) had 350 feet of sight distance in which to see the victim; and (3) did not brake, slow down, or sound the defendant's horn prior to striking the victim. *Hamby v. State*, 256 Ga. App. 886, 570 S.E.2d 77 (2002).

Evidence was sufficient to support the defendant's convictions for driving under the influence, vehicular homicide, reckless driving, unsafe speed, and other charges as the evidence showed that the defendant was caught trying to take merchandise from a store, and then struck and killed the victim with the defendant's van as the defendant left the store parking lot and turned on to a highway at a time when the defendant admittedly was under the influence of drugs. *Cromartie v. State*, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

Recovery for negligent train operation. — It was not the legislative scheme

that the operator of a machine owed a statutory duty to the railroad company to keep the machine under control and not to cause the machine to run more than six miles an hour so as to prevent running into a hole or down a declivity, if the company should negligently leave one on the company's right of way, but not immediately on the crossing of the tracks, by failing to comply with the company's statutory duty as to keeping the public road crossing in repair. *Western & A.R.R. v. Smith*, 145 Ga. 276, 88 S.E. 983 (1916) (decided under former Code 1910, § 1770(5)).

That an automobile approaches a railroad at an unlawful rate of speed will not necessarily preclude recovery for negligent operation of a train. *Payne v. Wells*, 28 Ga. App. 29, 109 S.E. 926 (1921) (decided under former Code 1910, § 1770(5)).

Extension of criminal activity into adjoining county. —

When a driver voluntarily and criminally begins operating the driver's automobile in excess of the speed limit and voluntarily, continuously, and uninterrupted extends the driver's criminal act into an adjoining county, the driver violates former Code 1933, § 68-301 in each county. A conviction for violating that section in one county, under such circumstances, will be no bar to a prosecution in the adjoining county. *Hall v. State*, 73 Ga. App. 616, 37 S.E.2d 545 (1946) (decided under former Code 1933, § 68-301).

If way ahead not clear to pass, driver authorized to reduce speed. —

When the facts alleged showed that both a truck and a car were approaching the crest of a hill, where the way ahead was not clear for the truck to pass the car, the circumstances authorized the driver of the car to reduce the car's speed in some degree at the time and place. *Young v. Truitt*, 93 Ga. App. 143, 91 S.E.2d 115 (1955).

Speed allowing stopping within headlight range often required. —

Under Ga. L. 1953, Nov.-Dec. Sess., p. 556 which requires a reasonable and prudent speed under existing conditions and hazards, a speed which allows stopping within the range of headlights will often be required, but not always, e.g., a

well-lighted, limited access highway in clear weather and light traffic. *Ruffin v. Bristol*, 125 Ga. App. 367, 187 S.E.2d 577 (1972).

Inability to see over hill. — Fact that the defendant was traveling an upgrade and would not have been able to see the plaintiff until the defendant reached the crossing did not relieve the defendant of the duty to keep the defendant's vehicle under proper control at all times. *Broadnax v. Nunn*, 97 Ga. App. 864, 104 S.E.2d 553 (1958).

When municipal ordinance establishing maximum speed limit becomes effective. — Clear import of the language of Ga. L. 1957, Nov.-Dec. Sess., p. 556 is that a municipal ordinance seeking to establish a maximum speed limit different from the maximum state speed limits permitted is effective to accomplish that purpose only when it is implemented by the placement of appropriate signs publishing the limit. *Palmer v. Stevens*, 115 Ga. App. 398, 154 S.E.2d 803 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Official signs afford same protection as official devices. — Official traffic control signs, such as "Men Working," "Watch for Mowers," and "Survey Party,"

afford the same legal protection that is afforded by other official traffic control devices. 1970 Op. Att'y Gen. No. 70-55.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 272.

C.J.S. — 60A C.J.S., Motor Vehicles, § 671 et seq.

ALR. — Excuse for exceeding speed limit for automobiles, 29 ALR 883.

Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Driving automobile at speed which prevents stopping within range of vision as negligence, 97 ALR 546.

Liability of state, municipality, or public agency for vehicle accident occurring because of accumulation of water on street or highway, 61 ALR2d 425.

Necessity and propriety of instruction

as to prima facie speed limit, 87 ALR2d 539.

Indefiniteness of automobile speed regulations as affecting validity, 6 ALR3d 1326.

Opinion testimony as to speed of motor vehicle based on skid marks and other facts, 29 ALR3d 248.

Automobiles: sudden emergency as exception to rule requiring motorist to maintain ability to stop within assured clear distance ahead, 75 ALR3d 327.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 ALR4th 933.

40-6-181. Maximum limits.

(a) The limits specified in this Code section or established as authorized in this article shall be the maximum lawful vehicle speeds, except when a special hazard exists that requires a lower speed for compliance with Code Section 40-6-180.

(b) Consistent with the provision of engineering and traffic investigations regarding maximum speed limits as provided in Code Section 40-6-182, no person shall drive a vehicle at a speed in excess of the following maximum limits:

- (1) Thirty miles per hour in any urban or residential district;

(1.1) Thirty-five miles per hour on an unpaved county road unless designated otherwise by appropriate signs;

(2) Seventy miles per hour on a highway on the federal interstate system and on physically divided highways with full control of access which are outside of an urbanized area of 50,000 population or more, provided that such speed limit is designated by appropriate signs;

(3) Seventy miles per hour on a highway on the federal interstate system which is inside of an urbanized area of 50,000 population or more, provided that such speed limit is designated by appropriate signs;

(4) Sixty-five miles per hour on those sections of physically divided highways without full access control on the state highway system, provided that such speed limit is designated by appropriate signs; and

(5) Fifty-five miles per hour in other locations.

(c) The maximum speed limits set forth in this Code section may be altered as authorized in Code Sections 40-6-182, 40-6-183, and 40-6-188. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 48; Ga. L. 1963, p. 26, § 1; Ga. L. 1974, p. 11, § 1; Code 1933, § 68A-802, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1982, p. 1290, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 22, § 40; Ga. L. 1988, p. 30, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 759, § 1.1; Ga. L. 1996, p. 469, § 1.1; Ga. L. 2014, p. 851, § 8/HB 774.)

The 2014 amendment, effective July 1, 2014, substituted “Seventy” for “Sixty-five” at the beginning of paragraph b)(3).

Cross references. — Speed limits in parks, historic sites, or recreational areas, § 12-3-10.

Editor’s notes. — Ga. L. 1996, p. 469, § 4, not codified by the General Assembly, provides: “This Act shall become effective

July 1, 1996, and shall apply with respect to offenses committed on or after that date. The provisions of this Act shall not apply to or affect offenses committed prior to that effective date.”

Law reviews. — For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-301 are included in the annotations for this Code section.

Constitutionality. — Enumeration of error charging that O.C.G.A. § 40-6-181 is unconstitutional was without merit. *Getz v. State*, 251 Ga. 462, 306 S.E.2d 918 (1983).

Statute authorizes quasi-legislative activity. — O.C.G.A. §§ 40-6-181 and 40-6-182 are laws which plainly authorize the Georgia Department of Transportation to exercise the quasi-legislative function of adopting rules (i.e., establishing speed limits on state highways) which carry the maximum speed limit law into effect and provide detail for it. In other words, the Department’s administrative

actions of determining and establishing the appropriate speed limit for a particular roadway based on various conditions is analogous to the legislative act of making law. *DOT v. Watts*, 260 Ga. App. 905, 581 S.E.2d 410 (2003).

Instruction containing incorrect speed limit not reversible error. — When the actual speed limit in the area of the accident was 55 miles per hour, the court's reference to a 35-mile-per-hour speed limit in the court's instruction to the jury, although inappropriate, did not constitute a reversible error. *Reliance Ins. Co. v. Bridges*, 168 Ga. App. 874, 311 S.E.2d 193 (1983).

No fatal variance when the speed alleged in the accusation was not a material allegation. — When the accusation alleged 100 mph and the evidence showed only 95 mph, no fatal variance occurred because: (1) to have been guilty of speeding, one need have only exceeded the designated speed limit under O.C.G.A. § 40-6-181(b); and (2) greater speeds by specified increment affected only the punishment and were therefore not material allegations to prove the crime of speeding. *Jones v. State*, 258 Ga. App. 337, 574 S.E.2d 398 (2002).

With regard to the defendant's trial and conviction for speeding, the trial court properly denied the defendant's motion for a directed verdict, which was based on the assertion that the state's evidence only showed that the defendant was driving 80 miles per hour in a 65 mile per hour zone and, therefore, the state failed to prove that the defendant was driving 16-20 miles per hour over the posted speed limit as there was no fatal variance between the indictment and the evidence at trial since actual speed was not a material averment of the indictment that had to be proven and it was within the jury's province to resolve the conflicting evidence against the defendant. *Porter v. State*, 290 Ga. App. 113, 658 S.E.2d 893 (2008).

Incremental speed not material to accusation. — Accusation specified that the defendant was charged with exceeding the speed limit on a certain road on a certain day, which was sufficient to put the defendant on notice that the defendant was being tried for speeding,

O.C.G.A. § 40-6-181(b); greater speeds by specified increments affected only the punishment and were therefore not material allegations to prove the crime of speeding so that the allegation that the defendant was traveling 127 mph was not a material averment that had to be proven. *Nye v. State*, 279 Ga. App. 347, 631 S.E.2d 386 (2006).

Count mistakenly naming officer as perpetrator. — Defendant could not be convicted under an accusation charging speeding since the accusation mistakenly named the prosecuting law enforcement officer as the perpetrator of the offense, even though the error was the result of inadvertence or carelessness, and the trial court abused the court's discretion in refusing to grant a mistrial as to the defective count in the accusation. *Noeske v. State*, 181 Ga. App. 778, 353 S.E.2d 635 (1987).

Admissibility of evidence gained through use of speed detection device. — State is required to present the necessary foundation, including proof of the visibility of the police vehicle as required by O.C.G.A. § 40-14-7, before evidence of speed gained through the use of a speed detection device is admissible. *Johnson v. State*, 189 Ga. App. 192, 375 S.E.2d 290 (1988), overruled on other grounds, *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

State trooper's estimate that the defendant was driving 90 miles per hour in a zone designated for traveling no greater than 55 miles per hour was sufficient to support the defendant's conviction for speeding. *Jackson v. State*, 257 Ga. App. 715, 572 S.E.2d 60 (2002).

In a speeding and eluding prosecution, though an officer might not have advised the defendant of the defendant's right under O.C.G.A. § 40-14-5(b) to test a radar device for accuracy, any error in admitting the radar evidence was harmless since the defendant admitted speeding and the passenger said the car was traveling about 75 to 80 miles per hour (mph), which exceeded the 65 mph speed limit. *Segel v. State*, 293 Ga. App. 506, 667 S.E.2d 670 (2008).

Use of speed detection device without permit. — Although an officer used a

speed detection device without a permit, the trial court's determination of guilt was not invalid because the state made the state clear that it was not depending on the radar confirmation of the speed to convict defendant. *Stone v. State*, 257 Ga. App. 492, 571 S.E.2d 488 (2002).

Sentence not excessive. — Sentence of 12 months probation, a \$75 fine for speeding, and a concurrent 12 months probation for failure to dim headlights was within statutory limits, and was particularly merited in the case of defendant who had two prior DUI arrests and who, while acquitted of DUI in the instant case, had a blood alcohol level of .096 to .099 at the time of the defendant's arrest. *Pitts v. State*, 231 Ga. App. 9, 498 S.E.2d 534 (1998).

Trial court did not err in sentencing the defendant to a \$1,000 fine for speeding in violation of O.C.G.A. § 40-6-181(b)(2) because the defendant did not object to the state's failure to admit certified copies of the defendant's prior convictions, nor did the defendant dispute that the defendant had multiple convictions for traffic violations; when the trial court asked the defendant whether any of the defendant's previous violations occurred while the defendant was operating a motorcycle, the defendant implicitly admitted at least one prior conviction for speeding. *Jones v. State*, 308 Ga. App. 99, 706 S.E.2d 593 (2011).

Defendant's sentence to serve 12 months for speeding in violation of O.C.G.A. § 40-6-181(b)(2) was within authorized limits; O.C.G.A. § 40-6-1(b) simply sets limits on fines that can be imposed as punishment for a first offense of speeding and the statute does not restrict the available punishment for speeding to a fine. *Jones v. State*, 308 Ga. App. 99, 706 S.E.2d 593 (2011).

Uniform traffic citation accused the defendant of a general speeding charge, rather than of speeding at 96 mph in a 55 mph zone and therefore, the trial court properly found the defendant guilty of speeding at 88 mph in a 55 mph zone. *Wise v. State*, 234 Ga. App. 140, 506 S.E.2d 156 (1998).

Defendant's argument that the state was required to prove the defendant was

going 100 mph since that radar-gun speed was set forth in the uniform traffic citation (UTC) failed and the defendant's conviction for speeding under O.C.G.A. § 40-6-181 was affirmed because: (1) the UTC references to defendant's speed were not allegations but were notices of the evidence against the defendant; (2) even if the references to speed were allegations, the UTC specifically set forth the police officer's visual estimate of over 95 mph, and thus the defendant could not have complained that the evidence varied from that allegation; and (3) even if the radar-gun 100-mph allegation were the only allegation of speed, it would not have been a material allegation, and thus no fatal variance would have occurred. *Jones v. State*, 258 Ga. App. 337, 574 S.E.2d 398 (2002).

Evidence sufficient for conviction. — Evidence that a police officer observed the defendant driving above the speed limit, which the officer confirmed through use of the officer's radar and speedometer, was sufficient to support the defendant's conviction for speeding. *Stearnes v. State*, 261 Ga. App. 522, 583 S.E.2d 195 (2003).

Although the state failed to provide a proper foundation for the introduction of laser detection evidence, other evidence at trial was sufficient to sustain the defendant's conviction for speeding because the police officer who observed the defendant's vehicle testified that the vehicle was traveling at an "obvious high rate of speed" and faster than the speed limit. In the Interest of J.D.S., 273 Ga. App. 576, 615 S.E.2d 627 (2005).

Defendant's conviction for speeding was supported by sufficient evidence including the arresting officer's testimony that the speed limit at the scene was 35 mph, greater than the statutory maximum. *Frasard v. State*, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

Recovery predicated on finding of gross negligence. — It was not error for a court to charge former Code 1933, § 68-301 as there were allegations to the effect that under the circumstances a violation of applicable speed laws was gross negligence; it was not charged that a violation of the speed laws in itself was gross negligence, when "gross negligence" was

defined by the judge in the judge's charge to the jury; and it was made clear to the jury that recovery must be predicated on a finding of gross negligence on the part of the driver of the automobile. *Kimberly v. Reed*, 79 Ga. App. 137, 53 S.E.2d 208 (1949) (decided under former Code 1933, § 68-301).

Venue. — In the absence of constitutional or statutory provisions to the contrary, a criminal offense under former Code 1933, § 68-301 must be prosecuted in the county or district in which the offense was committed, unless the venue was changed. *Hall v. State*, 73 Ga. App. 616, 37 S.E.2d 545 (1946) (decided under former Code 1933, § 68-301).

Extension of criminal activity into adjoining county. — When a driver voluntarily and criminally began operating a driver's automobile in excess of the speed limit and voluntarily, continuously, and uninterruptedly extended the driver's criminal act into an adjoining county, the driver violated former Code 1933, § 68-301 in each county. A conviction for violating that section in one county under such circumstances would be no bar to a prosecution in the adjoining county. *Hall v. State*, 73 Ga. App. 616, 37 S.E.2d 545 (1946) (decided under former Code 1933, § 68-301).

Factors in determining whether limit reduced. — Whether the speed limit has been reduced depends upon whether action has been taken by a governing authority and proper notice posted on the highway. *Harper v. Brown*, 122 Ga. App. 316, 176 S.E.2d 621 (1970).

Reduction of speed required by existing hazards. — If the actual and potential hazards existing at any particular place on a highway require a speed of less than 60 (now 55) miles per hour, then the operator should reduce the speed of the operator's automobile at that place to whatever is reasonable and prudent under the conditions. *Thomas v. Barnett*, 107 Ga. App. 717, 131 S.E.2d 818 (1963).

Negligence per se. — While a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 has been called negligence per se, it cannot be denied or refuted that to find it to be negligence per se, a finding of common-law negligence must first be

made. When the plaintiff simply charged the defendant, not with driving over 35 miles per hour, but with driving too fast for the conditions existing at the time and place involved, this is not negligence per se. *Grayson v. Yarbrough*, 103 Ga. App. 243, 119 S.E.2d 41 (1961).

Speeding merged into reckless driving. — Defendant's conviction and sentence for speeding was vacated because the offense of speeding should have been merged into the offense of reckless driving; the defendant should have been convicted and sentenced only for reckless driving. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Charging whole of section surplusage, but not error. — Court's charge in a personal injury action of substantially the whole of Ga. L. 1953, Nov.-Dec. Sess., p. 556, which included the statement that speed in a business or residential district is 35 (now 30) miles per hour, was surplusage, but it was not error for the reason that nothing in the charge intimated to the jury that the defendant would have been guilty of negligence in exceeding a 35-mile-per-hour (now 30-mile-per-hour) rather than a 60-mile-per-hour (now 55-mile-per-hour) maximum. *Collins v. Porterfield*, 102 Ga. App. 294, 116 S.E.2d 105 (1960).

Jury question alleged as to whether cause of collision excessive speed. — When plaintiff driver, before entering the inner traffic lane, signaled the plaintiff's intention to do so, and the defendant driver was guilty of negligence per se in that defendant was operating a truck in excess of 55 miles per hour in violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556, a jury question is alleged as to whether the proximate cause of the collision was negligence on the part of the defendant driver due to the defendant's excessive speed and failure to slow the defendant's vehicle down so as to avoid colliding with the plaintiff's automobile after an emergency in the road ahead forced the plaintiff driver to turn into the inner traffic lane. *Hargrove v. Tanner*, 98 Ga. App. 16, 104 S.E.2d 665 (1958).

Trial court did not commit reversible error in failing to give, sua sponte, a jury charge on justification, because there was

no evidence to support such a charge; contrary to the defendant's assertions in the defendant's brief, at no time did the defendant testify that the defendant accelerated to 103 mph because the defendant had no safer option. *Jones v. State*, 315 Ga. App. 688, 727 S.E.2d 512 (2012).

Jury charge not misleading. — With regard to the defendant's trial and conviction for speeding, the portion of the jury charge that prohibited speeding in an urbanized area over a certain population amount was held to be mere surplusage and did not mislead the jurors. *Porter v. State*, 290 Ga. App. 113, 658 S.E.2d 893 (2008).

Cited in *Gray v. State*, 156 Ga. App. 117, 274 S.E.2d 115 (1980); *Bilbrey v. State*, 254 Ga. 629, 331 S.E.2d 551 (1985); *Blackwell v. State*, 180 Ga. App. 253, 349 S.E.2d 13 (1986); *Laymac v. State*, 181 Ga. App. 737, 353 S.E.2d 559 (1987); *Cabral v.*

White, 181 Ga. App. 816, 354 S.E.2d 162 (1987); *Coop v. State*, 186 Ga. App. 578, 367 S.E.2d 836 (1988); *Carver v. State*, 199 Ga. App. 842, 406 S.E.2d 236 (1991); *Pratt v. State*, 208 Ga. App. 617, 431 S.E.2d 397 (1993); *Forsman v. State*, 239 Ga. App. 612, 521 S.E.2d 410 (1999); *State v. Lockett*, 259 Ga. App. 179, 576 S.E.2d 582 (2003); *King v. State*, 262 Ga. App. 37, 584 S.E.2d 652 (2003); *In the Interest of W.N.J.*, 268 Ga. App. 637, 602 S.E.2d 173 (2004); *Whittle v. State*, 282 Ga. App. 64, 637 S.E.2d 800 (2006); *McWilliams v. State*, 287 Ga. App. 585, 651 S.E.2d 849 (2007); *Pruitt v. State*, 289 Ga. App. 307, 656 S.E.2d 920 (2008); *Spence v. State*, 295 Ga. App. 583, 672 S.E.2d 538 (2009); *Waterman v. State*, 299 Ga. App. 630, 683 S.E.2d 164 (2009); *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012); *Puckett v. State*, 321 Ga. App. 785, 743 S.E.2d 466 (2013).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 671et seq., 683.

ALR. — Excuse for exceeding speed limit for automobiles, 29 ALR 883.

Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Necessity and propriety of instruction as to prima facie speed limit, 87 ALR2d 539.

40-6-182. Establishment of state speed zones.

Whenever the commissioner of public safety or the commissioner of transportation shall determine upon the basis of an engineering and traffic investigation that any maximum speed set forth in this article is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the state highway system, they may jointly determine and declare a reasonable and safe maximum speed limit at such place, which shall be effective when appropriate signs giving notice thereof are erected. Such a maximum speed limit may be declared to be effective at all times as are indicated upon such signs; and differing limits may be established for different times of day, different varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs. In no case shall the maximum speed limit for any highway be established at higher than the maximum speed limits set forth in Code Section 40-6-181 for that type of highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 49; Ga. L. 1957, p. 419, § 1; Ga. L. 1963, p. 254, § 2; Code 1933, § 68A-803, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-301 are included in the annotations for this Code section.

Setting speed limits was quasi-legislative activity. — In a case in which a parent filed a wrongful death action against the Georgia Department of Transportation alleging that the Department's negligence in choosing to set the speed limit along a certain stretch of highway at 50 miles per hour led to the death of the parent's child, the trial court erred in denying the Department's motion to dismiss the complaint on the basis of sovereign immunity under O.C.G.A. § 50-21-24(5) given that: (1) O.C.G.A. § 40-6-182 provided that the Georgia Commissioner of Public Safety and the Commissioner of the Georgia Transportation Department could set the speed limit on any part of the state highway system based on the conditions in that area; (2) the Department's participation in setting the speed limit pursuant to O.C.G.A. § 40-6-182 was quasi-legislative action, as it entailed adopting rules and was analogous to the legislative activity of making of laws; and (3) pursuant to O.C.G.A. § 50-21-24(5), the Department could not be held liable for losses resulting from such quasi-legislative action. *DOT v. Watts*, 260 Ga. App. 905, 581 S.E.2d 410 (2003).

School zones outside municipal limits. — There is no statutory provision

authorizing the establishment of school zones, as such, or restricting the speed of motor vehicles therein, outside the corporate limits of municipalities. *Whitley Constr. Co. v. Price*, 89 Ga. App. 352, 79 S.E.2d 416 (1953) (decided under former Code 1933, § 68-301).

Factors in determining whether speed limit reduced. — Whether the speed limit has been reduced depends upon whether action has been taken by a governing authority and proper notice posted on the highway. *Harper v. Brown*, 122 Ga. App. 316, 176 S.E.2d 621 (1970).

Signs designating zones need not be erected personally by commissioners. — There is no requirement that the physical erection of the signs giving notice of designated speed zones be done by the commissioner of public safety or the commissioner of transportation personally, rather than through an agent. *Munday v. Brissette*, 113 Ga. App. 147, 148 S.E.2d 55, rev'd on other grounds, 222 Ga. 162, 149 S.E.2d 110 (1966).

Sufficient evidence to find defendant drivers negligent. — Under an application of the rules of law to the facts, the jury was authorized to find from the evidence adduced upon the trial, and the reasonable inferences to be drawn therefrom, that the defendant drivers were grossly negligent in causing the plaintiff's injuries. *Lawrence v. Hayes*, 92 Ga. App. 778, 90 S.E.2d 102 (1955).

Cited in *Frasard v. State*, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Section constitutional. — Permitting the Department of Public Safety (now Commissioner of Public Safety) to fix special speed restrictions, within an authorized maximum, on any segment of a

public street or highway, based upon an engineering or traffic survey, is not an unconstitutional delegation of legislative power. 1945-47 Op. Att'y Gen. p. 408.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 263 et seq.

ALR. — Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Necessity and propriety of instruction as to prima facie speed limit, 87 ALR2d 539.

40-6-183. Alteration of speed limits by local authorities.

(a) Whenever the governing authority of an incorporated municipality or county, in its respective jurisdiction, determines on the basis of an engineering and traffic investigation that the maximum vehicle speed permitted under this chapter is greater than is reasonable and safe under the conditions found to exist upon a highway or part of a highway under its jurisdiction, such authority may determine and declare a reasonable and safe maximum vehicle speed limit thereon which:

- (1) Decreases the limit at intersections;
- (2) Decreases the limit outside an urban or residential district, but not to less than 30 miles per hour;
- (3) Decreases the limit within an urban or residential district, but not to less than 25 miles per hour; or
- (4) Decreases any speed limit where a special hazard or condition exists that requires lower speed for compliance with Code Section 40-6-180.

(b) Such an authority in its respective jurisdiction shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum speed limit thereon which may be greater or less than the maximum speed permitted under this chapter for an urban district, but in no case shall the maximum be established at higher than 55 miles per hour.

(c) Any altered limit established as authorized in this Code section shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

(d) Not more than six alterations as authorized in this Code section shall be made per mile along a street or highway, except in the case of reduced limits at intersections. The difference between adjacent limits shall not be more than ten miles per hour, except for reductions for school speed zones, which may be not more than 20 miles per hour when a warning sign is placed 700 feet in advance of the point at which the speed reduction is required. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 50; Code 1933, § 68A-804, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1978, p. 1967, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 68-301, 68-303, and 68-312 are included in the annotations for this Code section.

City ordinance penalizing lesser speed than is penalized by state. — Legislative provisions regulating the speed of motor vehicles within the state specifically authorize municipalities to regulate traffic within the municipal limits. *Walters v. State*, 90 Ga. App. 360, 83 S.E.2d 48 (1954) (decided under former Code 1933, §§ 68-301, 68-303, and 68-312).

Section inapplicable to state highways. — Ga. L. 1953, Nov.-Dec. Sess., p.

556 cannot be construed to confer upon local authorities the power to install and maintain traffic control devices on state highways. *Mayor of Woodbury v. State Hwy. Dep't*, 225 Ga. 723, 171 S.E.2d 272 (1969).

Cited in *Sanders v. City of Columbus*, 140 Ga. App. 441, 231 S.E.2d 473 (1976); *Diamond v. State*, 151 Ga. App. 690, 261 S.E.2d 434 (1979); *Stanfield v. Smith*, 152 Ga. App. 22, 262 S.E.2d 216 (1979); *Reid v. City of Hogansville*, 202 Ga. App. 131, 413 S.E.2d 457 (1991); *Spence v. State*, 295 Ga. App. 583, 672 S.E.2d 538 (2009); *Frasard v. State*, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 263 et seq.

ALR. — Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Necessity and propriety of instruction as to prima facie speed limit, 87 ALR2d 539.

40-6-184. Impeding traffic flow; minimum speed limits; passing lane.

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation.

(b) Whenever the commissioner of public safety or the commissioner of transportation or local authorities determine on the basis of any engineering and traffic investigation that slow speeds on any part of a road under their respective jurisdictions impede the normal and reasonable movement of traffic, such commissioners jointly, or such local authorities, may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation, and such limit shall be effective when posted upon fixed or variable signs.

(c) Upon roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person shall continue to operate a motor vehicle in the passing lane once such person knows or should reasonably know that he or she is being overtaken in such lane from the rear by a motor vehicle traveling at a higher rate of speed. For purposes

of this Code section, “passing lane” means the most left-hand lane other than a high occupancy vehicle lane.

(d) Subsection (c) of this Code section shall not apply:

(1) When traffic conditions or congestion make it necessary to drive in the passing lane;

(2) When inclement weather, obstructions, or hazards make it necessary to drive in the passing lane;

(3) When compliance with a law of this state or with an official traffic control device makes it necessary to drive in the passing lane;

(4) When a vehicle must be driven in the passing lane to exit or turn left;

(5) On toll highways, when necessary to pay a toll or use a pass;

(6) To authorized emergency vehicles engaged in official duties; or

(7) To vehicles engaged in highway maintenance and construction operations. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 51; Code 1933, § 68A-805, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1987, p. 361, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 2014, p. 167, § 1/HB 459.)

The 2014 amendment, effective July 1, 2014, redesignated former paragraph (a)(1) as subsection (a); deleted former paragraph (a)(2), which read: “On roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person shall continue to operate a motor vehicle in the most left-hand lane at less than the maximum lawful speed limit once such person knows or should reasonably know that he is being overtaken in such lane from the rear by a motor vehicle traveling at a higher rate of speed, except when such motor vehicle is

preparing for a left turn.”; substituted “such limit” for “that limit” near the end of subsection (b); and added subsections (c) and (d). See editor’s note for applicability.

Cross references. — Truck use of left-hand lane on multi-lane highways, § 40-6-52.

Editor’s notes. — Ga. L. 2014, p. 167, § 2/HB 459, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2014, and shall apply to offenses committed on or after such date.”

JUDICIAL DECISIONS

Legislative intent. — O.C.G.A. § 40-6-184(a) does not apply when the driver is being overtaken by another vehicle that is exceeding the maximum speed limit since in such a context the other vehicle is not overtaking the driver because the latter is impeding the flow of traffic by traveling unreasonably slow, but rather because the other vehicle is traveling unreasonably fast in violation of the traffic laws; the legislative intent behind the statute was to prevent unsafe slow

driving, not to punish drivers for failing to yield the lane to speeders. *State v. Parke*, 304 Ga. App. 124, 695 S.E.2d 413 (2010).

Negligence per se. — When the defendant came to a complete or almost complete stop in the road, allegedly without any brake, emergency, or signal lights, at a time and place where traffic was “bad,” there was evidence that the defendant was negligent per se and partially at fault for the subsequent accident after a car following the defendant was hit by an

other car and a directed verdict in favor of the defendant was reversed. *Harrison v. Jenkins*, 235 Ga. App. 665, 510 S.E.2d 345 (1998).

Operation of farm machinery on public roads. — Former Code 1933, T. 68A did not exclude farm machinery from the public roads, but to permit the jury to impose liability on the basis of the speed of a corn combine would be tantamount to holding that the operation of farm machinery on the public roadway typically constituted negligence per se. *Lott v. Smith*, 156 Ga. App. 826, 275 S.E.2d 720 (1980).

Traffic stops for driving too slowly. — Fact that a vehicle was being driven so slowly as to create a traffic hazard authorized a stop for a traffic violation and authorized the officers to investigate the condition of the driver. *Taylor v. State*, 230 Ga. App. 749, 498 S.E.2d 113 (1998).

Trial court did not err in granting the defendant's motion to suppress because the trial court was authorized to find that the police officer who initiated the traffic stop lacked an articulable suspicion to believe that the defendant was impeding the flow of traffic in violation of O.C.G.A. § 40-6-184(a) when under the facts, the officer's belief that the defendant was impeding the flow of traffic was an insufficient basis for initiating an investigative stop; the court of appeals would not disturb the trial court's findings, which was based upon conflicting witness testimony, that at the time of the traffic stop, the defendant was traveling above the posted minimum speed limit and only a few miles below the posted maximum speed limit when the defendant's vehicle was passed by two vehicles that were speeding. *State v. Parke*, 304 Ga. App. 124, 695 S.E.2d 413 (2010).

Investigative stop held proper. — Trial court did not err in denying defendant's motion to suppress cocaine found during a search of the defendant's car as the officer's testimony authorized a finding that the officer saw the defendant committing traffic violations for which the defendant received either a warning or a citation — impeding traffic, in violation of O.C.G.A. § 40-6-184(a), and following too closely, in violation of O.C.G.A. § 40-6-49.

Warren v. State, 314 Ga. App. 477, 724 S.E.2d 404 (2012), cert. denied, No. S12C1072, 2012 Ga. LEXIS 548 (Ga. 2012).

Reasonable opportunity to attain speed. — Minimum speed does not apply to vehicle entering highway from the emergency strip until there has been reasonable opportunity to attain this speed. *Blake v. Continental S.E. Lines*, 168 Ga. App. 718, 309 S.E.2d 829 (1983).

Momentary delay in proceeding through green light. — Since merely delaying one's start momentarily at an intersection is not impeding the flow of traffic on a four-lane road, a deputy sheriff lacked reasonable articulable suspicion to stop the defendant for impeding the flow of traffic in violation of O.C.G.A. § 40-6-184(a) since the defendant was stopped at a green light for only two or three seconds before the defendant proceeded forward. *Martin v. State*, 257 Ga. App. 435, 571 S.E.2d 459 (2002).

Evidence held sufficient for conviction. — Because the evidence sufficiently showed that the defendant's truck was traveling at a low rate of speed, approximately 25 to 30 m.p.h., on an interstate highway with a minimum posted speed limit of 40 m.p.h., and the investigating officer testified that traffic was getting backed up behind the defendant's truck, the appeals court found that the evidence was sufficient to support the defendant's conviction under O.C.G.A. § 40-6-184(a)(1). *Dunn v. State*, 289 Ga. App. 585, 657 S.E.2d 649 (2008), cert. denied, 2008 Ga. LEXIS 496 (Ga. 2008).

Evidence insufficient for conviction. — Because there was no evidence that the defendant was driving unusually slowly or that any other cars attempted to pass the defendant while the defendant was stopped in a lane of travel, the defendant's conviction for impeding traffic could not stand. *Darwick v. State*, 291 Ga. App. 239, 661 S.E.2d 859 (2008).

Since there was no evidence any vehicles attempted to pass the defendant while the defendant was stopped, the evidence was not sufficient to support the conviction for impeding the flow of traffic. *Green v. State*, 323 Ga. App. 832, 748 S.E.2d 479 (2013).

Cited in *Simpson v. Reed*, 186 Ga. App. 297, 367 S.E.2d 563 (1988); *Gossett v. State*, 199 Ga. App. 286, 404 S.E.2d 595 (1991); *Hall v. Buck*, 206 Ga. App. 754, 426

S.E.2d 586 (1992); *State v. Whelchel*, 269 Ga. App. 314, 604 S.E.2d 200 (2004); *Brantley v. State*, 290 Ga. App. 764, 660 S.E.2d 846 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 275.

C.J.S. — 60A C.J.S., Motor Vehicles, § 723.

ALR. — Right of way at street or highway intersections, 37 ALR 493; 47 ALR 595.

Construction, application, and effect, in civil motor vehicle accident cases, of “slow speed” traffic statutes prohibiting driving at such a slow speed as to create danger, to impede normal traffic movement, or the like, 66 ALR2d 1194.

Indefiniteness of automobile speed regulations as affecting validity, 6 ALR3d 1326.

Liability or recovery in automobile negligence action as affected by driver’s being blinded by lights of motor vehicle, 64 ALR3d 551.

Liability or recovery in automobile negligence action as affected by driver’s being blinded by lights other than those of a motor vehicle, 64 ALR3d 760.

40-6-185. Speed limits on bridges and other elevated structures.

(a) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is posted as provided in this Code section.

(b) The Department of Transportation may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and, if it shall thereupon find that such structure cannot, with safety to itself, withstand vehicles traveling at the speed otherwise permissible under this chapter, the department shall determine and declare the maximum speed of vehicles which such structure can safely withstand and shall cause or permit suitable signs stating such maximum speed to be erected and maintained before each end of such structure.

(c) Upon the trial of any person charged with a violation of subsection (a) of this Code section, proof of determination of the maximum speed by the department and the existence of such signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 53; Code 1933, § 68A-806, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Excuse for exceeding speed limit for automobiles, 29 ALR 883.

40-6-186. Racing on highways or streets.

(a) As used in this Code section, the term:

(1) "Drag race" means the operation of two or more vehicles from a point side by side at accelerated speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

(2) "Racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

(b) No person shall drive any vehicle on a highway in this state in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition of speed, contest of speed, or test or exhibition of speed.

(c) Any person convicted of violating subsection (b) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1959, p. 303, § 1; Ga. L. 1961, p. 438, §§ 1-4; Code 1933, § 68A-808, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2006, p. 449, § 21/HB 1253.)

Cross references. — Suspension of driver's license for conviction for racing on highways or streets, § 40-5-54. Penalty for laying drags, § 40-6-251.

JUDICIAL DECISIONS

Section not lacking in clarity. — Former Code 1933, § 68A-808 set out with reasonable definiteness what acts were prohibited. In re D.B.A., 242 Ga. 40, 247 S.E.2d 843 (1978) (see O.C.G.A. § 40-6-186).

Races and contests of speed are offenses under drag racing. Perkins v. State, 151 Ga. App. 199, 259 S.E.2d 193 (1979), overruled on other grounds, Chance v. State, 154 Ga. App. 543, 268 S.E.2d 737 (1980).

Only one acting with intention can be convicted of crime. — Former Code 1933, § 68A-808 must be construed in pari materia with other criminal sections and one can never be convicted of a crime

unless one acts with intention, or criminal negligence. Snell v. McCoy, 135 Ga. App. 832, 219 S.E.2d 482 (1975) (see O.C.G.A. § 40-6-186).

Joint liability of racers. — Basis for imposing liability upon a racer for the damages resulting from a collision involving only a co-racer's vehicle is that two or more persons engaged in a common enterprise are jointly liable for wrongful acts done in connection with the enterprise, at least when the enterprise is an unlawful one, in which case all are answerable for any injury done by any one of them, and even assuming that the evidence would not authorize a finding that the defendant and another were technically "racing" as

defined in O.C.G.A. § 40-6-186(a)(2), a "common enterprise" to drive two cars in tandem at excessive speeds and in a reckless manner is as much a tacit "unlawful joint enterprise" to violate the traffic laws of this state as an agreement to engage in "racing." *Bellamy v. Edwards*, 181 Ga. App. 887, 354 S.E.2d 434 (1987); *Kilpatrick v. Foster*, 185 Ga. App. 453, 364 S.E.2d 588 (1987), cert. denied, 185 Ga. App. 910, 364 S.E.2d 588 (1988).

Transfer of case involving juveniles to superior court. — Evidence that a juvenile had a history of using marijuana and other drugs, had used marijuana before the juvenile lost control of a car the juvenile was driving while racing another car on a public street, causing a multi-car collision in which two people died, had challenged other people to automobile races on several occasions, violated the conditions of the juvenile's driver's license by driving with a non-family member, and used drugs after the accident was sufficient to support the juvenile court's judgment that the juvenile was not amenable to treatment in the juvenile court system

and that the interests of the juvenile and the community would be better served if the case was transferred to the superior court. In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004).

State's proof against mere occupant of vehicle. — When an occupant of a vehicle who was neither the driver nor the owner of the vehicle is charged with engaging in a contest of speed, or a race, the state must prove positive wrongful acts against the occupant. It may not rest the state's case simply on proof that the person was an occupant. *Snell v. McCoy*, 135 Ga. App. 832, 219 S.E.2d 482 (1975).

Evidence sufficient to support conviction. — Defendants were guilty of racing even though their automobiles were capable of going faster than the speeds observed by the police and the distance between the vehicles stayed basically the same; the officers testified that one was trying to "outrun" the other. *Dodd v. State*, 205 Ga. App. 472, 422 S.E.2d 313 (1992).

Cited in *Cabral v. White*, 181 Ga. App. 816, 354 S.E.2d 162 (1987); *Eason v. Dozier*, 298 Ga. App. 65, 679 S.E.2d 89 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Suspension and retention of licenses of convicted racers. — Department should continue to suspend and retain drivers' licenses of persons convicted of racing, in accordance with the provisions of former Code 1933, § 68A-808, and disregard the inconsistent provisions of Ga. L. 1975, p. 1008, § 1 (see O.C.G.A. Ch. 5, T. 40) which were approved prior to the approval of that section. 1975 Op. Att'y Gen. 75-117 (see O.C.G.A. § 40-6-186).

Official reservation of street for

drag-racing purposes. — Prohibition of drag racing "on a highway in the state" in O.C.G.A. § 40-6-186 does not apply when the drag racing activities take place on a street which has been closed for that purpose. 1983 Op. Att'y Gen. No. U83-53.

City street which has been closed to the public for purposes of an officially sanctioned activity (such as a drag race) ceases to be a "highway" as defined by § 40-1-1(16) (now O.C.G.A. § 40-1-1(19)). 1983 Op. Att'y Gen. No. U83-53.

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 679.

ALR. — Excuse for exceeding speed limit for automobiles, 29 ALR 883.

Liability of participant in unauthorized highway race for injury to third person

directly caused by other racer, 13 ALR3d 431.

Liability of public authority for injury arising out of automobile race conducted on street or highway, 80 ALR3d 1192.

40-6-187. Charging violations; sentence to specify amount by which speed limit exceeded.

(a) In every charge of violation of any speed regulation in this chapter, the summons, uniform traffic citation, official charging instrument, or notice to appear shall specify the speed at which the defendant is alleged to have driven, the maximum speed applicable within the district or at the location, and whether the violation occurred on a two-lane road or highway. For purposes of this Code section, the term “two-lane road or highway” means a road or highway with two lanes for through-traffic movement exclusive of any portion of the road or highway adjoining the traveled way for parking, speed change, turning, weaving, truck climbing, or other purposes supplementary to through-traffic movement.

(b) For the purpose of imposing points pursuant to Code Section 40-5-57, every sentence for a violation of any speed regulation in this chapter shall state the specific amount by which the person convicted exceeded the speed limit. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 54; Code 1933, § 68A-807, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 2006, p. 449, § 22/HB 1253; Ga. L. 2009, p. 679, § 10/HB 160.)

JUDICIAL DECISIONS

Indictment for involuntary manslaughter held sufficiently definite. — When an indictment for involuntary manslaughter alleges violation of automobile speed regulations by stating that at the time of the accident the defendant was operating the defendant’s automobile at a rate of speed in excess of 60 (now 55) miles per hour, the allegation is sufficiently definite. *Byars v. State*, 92 Ga. App. 511, 88 S.E.2d 818 (1955).

Citation not defective. — When the officer left the box indicating “2-lane road” blank, the officer was complying with the citation statute by showing that the road consisted of more than two lanes at the location at issue and, thus, the citation was not defective. *Frasard v. State*, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 338, 339.

40-6-188. Highway work zones; reduction in speed; signage.

(a) As used in this Code section, the term:

(1) “Highway work zone” means a segment of any highway, road, or street where the Department of Transportation, a county, a municipality, or any contractor for any of the foregoing is engaged in constructing, reconstructing, or maintaining the physical structure of

the roadway or its shoulders or features adjacent to the roadway, including without limitation underground or overhead utilities or highway appurtenances, or any other type of work related thereto.

(2) "Work zone personnel" means employees of the Department of Transportation, a county, a municipality, or any contractor for any of the foregoing.

(b)(1) The Department of Transportation, any county, or any municipality may designate any segment of a highway, road, or street under its jurisdiction as a highway work zone.

(2) Whenever a highway work zone is designated pursuant to paragraph (1) of this subsection, there shall be erected or posted signage of adequate size at the beginning point of such highway work zone designating the zone and warning the traveling public that increased penalties for speeding violations are in effect for the highway work zone, and there shall be erected or posted at the end of such highway work zone adequate signage indicating the end of such zone and that increased penalties for speeding violations are no longer in effect.

(c)(1) The Department of Transportation or the governing authority of any county or municipal corporation is authorized to establish a temporary reduction in the maximum speed limit through any highway work zone located on or adjacent to any street or highway under its respective jurisdiction. The commissioner of transportation or the local governing authority shall not be required to conduct any engineering and traffic investigation in order to establish a reduced speed limit in a highway work zone pursuant to this paragraph.

(2) Whenever reduced speed zones are established pursuant to paragraph (1) of this subsection, there shall be erected or posted signage of adequate size at the beginning point of such speed zone designating the zone and the speed limit to be observed therein, and there shall be erected or posted at the end of such speed zone adequate signage indicating the end of such speed zone, which signage shall also indicate such different speed limit as may then be observed. Signs indicating such reduced speed limit shall be spaced not further than one mile apart throughout the highway work zone. Where the speed limit established pursuant to paragraph (1) of this subsection is at least ten miles per hour less than the established speed limit on the street or highway, there shall be erected at least 600 feet in advance of the beginning of the speed zone a sign of adequate size which shall bear the legend "Reduced Speed Ahead." Whenever any signage is required by this paragraph, the same shall be in addition to the signage requirements of paragraph (2) of subsection (b) of this Code section.

(d)(1) Any signage required by this Code section shall conform to applicable provisions of the Manual on Uniform Traffic Control Devices; provided, however, that nothing in this Code section shall prohibit the use of movable or portable speed limit signs in highway work zones.

(2) Any existing regulatory signage conflicting with signage erected or posted pursuant to this Code section shall be removed, covered, folded, or turned so as not to be readable by oncoming motorists.

(e)(1) In order for a person to be cited or convicted for exceeding a speed limit, reduced or otherwise, in any highway work zone as provided in paragraph (2) of this subsection, there must be present in the highway work zone at the time of the offense the signage required by this Code section and either:

(A) Work zone personnel; or

(B) Barriers, on-site work vehicles, or shoulder or pavement drop offs that constitute a hazard to the traveling public.

(2) A person convicted of exceeding the speed limit, reduced or otherwise, in any highway work zone designated pursuant to this Code section shall be guilty of a misdemeanor of a high and aggravated nature and shall be punished by a fine of not less than \$100.00 nor more than \$2,000.00 or by imprisonment for a term not to exceed 12 months, or both.

(f) Whenever the Department of Transportation finds it necessary to designate a highway work zone within a county or municipality, the Department of Transportation shall be required to notify the county or municipality of the work activity; provided, however, that the failure of the Department of Transportation to give such notice shall not be a defense to any charge of violating the speed limit in any highway work zone. (Code 1981, § 40-6-188, enacted by Ga. L. 1995, p. 759, § 2; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 866, § 2; Ga. L. 2000, p. 1313, § 4; Ga. L. 2003, p. 450, § 4.)

40-6-189. Classification as super speeder; fees; funding for trauma care system.

(a) As used in this Code section, the term “department” means the Department of Driver Services.

(b) In addition to any other fines or penalties imposed by any local jurisdiction or the department, the department shall administer and collect a fee of \$200.00 from any driver who is convicted of driving at a speed of 85 miles per hour or more on any road or highway or 75 miles

per hour or more on any two-lane road or highway, as defined in Code Section 40-6-187. Such a driver, upon conviction, shall be classified as a “super speeder.”

(c) The department shall notify offenders of the imposition of a fee under this Code section within 30 days after receipt of a qualifying ticket and notice of conviction. Failure to pay the fee imposed by this Code section within 90 days after receipt of the notice shall result in the suspension of the driver’s license or driving privileges of the offender, and, in addition to the existing fees and penalties, a fee of \$50.00 shall be assessed, payable upon the application for reinstatement of the driver’s license or driving privileges. Notice shall be provided by the department to the offender by first-class mail to the address shown on the records of the department. Such mailed notice shall be adequate notification of the fee imposed by this Code section and of the offender’s ability to avoid a driver’s license suspension by paying the fee prior to the effective date of the suspension. No other notice shall be required to make the driver’s license suspension effective.

(d) The department shall be authorized to promulgate rules and regulations to implement the provisions of this Code section.

(e) All fees collected under the provisions of this Code section shall be deposited in the general fund of this state with the intent that these moneys be used to fund a trauma care system in Georgia and the direct and indirect costs associated with the administration of this Code section. The Office of the State Treasurer shall separately account for all of the moneys received under the provisions of this Code section. (Code 1981, § 40-6-189, enacted by Ga. L. 2009, p. 679, § 11/HB 160.)

Cross references. — Georgia Trauma Care Network Commission, T. 31, C. 11, A. 5.

to Code Section 28-9-5, in 2010, “the State Treasurer” was substituted for “Treasury and Fiscal Services” in the second sentence of subsection (e).

Code Commission notes. — Pursuant

ARTICLE 10

STOPPING, STANDING, AND PARKING

JUDICIAL DECISIONS

Article’s purpose. — The legislature, in making it a crime to park in specified areas or fashions by the road, enacted the law for the benefit of all persons who might meet or follow the parked vehicle,

and the law’s purpose was to avoid collisions by persons coming from behind the parked vehicle and those meeting the parked vehicle. *O’Pry v. Goodman*, 132 Ga. App. 191, 207 S.E.2d 674 (1974).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Feasibility of Stopping or Parking Vehicle off Roadway, 26 POF2d 575.

ALR. — Lunch wagons in street, 4 ALR 346.

Applicability of motor vehicle regulations to public officials or employees, 19 ALR 459; 23 ALR 418.

Validity of ordinance which denies to automobiles while used for hire the parking privileges extended to automobiles generally, 22 ALR 113.

Right of abutting owner to control cab stands or parking in street, 33 ALR 355.

Reciprocal duties of drivers of automo-

biles or other vehicles proceeding in the same direction, 62 ALR 970; 104 ALR 485.

Municipal establishment or operation of off-street public parking facilities, 8 ALR2d 373.

When is motor vehicle “disabled” or the like within exception to statute regulating parking or stopping, 15 ALR2d 909.

Inference or presumption that owner of motor vehicle was its driver at time of traffic, driving, or parking offense, 49 ALR2d 456.

Liability of owner or driver of double-parked motor vehicle for ensuing injury, death, or damage, 82 ALR2d 726.

PART 1

GENERAL PROVISIONS

40-6-200. How vehicles to be parked; powers of Department of Transportation and local authorities.

(a) Except as otherwise provided in this Code section, every vehicle stopped or parked upon a two-way roadway shall be stopped or parked with the right-hand wheels parallel to and within 12 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

(b) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within 12 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder or with its left-hand wheels within 12 inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the Department of Transportation has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The department, with respect to highways under its jurisdiction, may place signs prohibiting, restricting, or limiting the stopping, standing, or parking of vehicles on any highway where, in its opinion, as evidenced by resolution or order entered in its minutes, such stopping, standing, or parking is dangerous to those using the highway

or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs, and no person shall stop, stand, or park any vehicle in violation of the restrictions on such signs. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 93; Ga. L. 1963, p. 254, § 6; Code 1933, § 68A-1004, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this Code section.

Limiting parking of vehicles on highways. — Department of Transportation may limit the parking of vehicles on any highways under the Department's jurisdiction. *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

Stop of vehicle for suspicion of drug dealing. — After the police came upon the car described in the tip and observed that the car was parked on the wrong side of the street with the car's engine running, a violation of O.C.G.A. § 40-6-200(a), although the officers were certainly conscious of the anonymous tip when the officers stopped the defendant, the officers were not required to refrain from stopping the defendant for the traffic violation merely because the officers suspected the defendant of selling drugs; the officers were authorized to stop the defendant and check the defendant's driver's license and insurance card. *Mack v. State*, 212 Ga. App. 187, 441 S.E.2d 503 (1994).

Temporary stops. — Under a reasonable construction, former Code 1933, § 68-303 should not apply to temporary stops made as a normal and reasonable incident to traffic conditions existing at

the time. *Railway Express Agency, Inc. v. Mathis*, 83 Ga. App. 415, 63 S.E.2d 921 (1951) (decided under former Code 1933, § 68-303).

Applicability to state highways in municipalities. — Provisions of Ga. L. 1933, Nov.-Dec. Sess., p. 556 apply to state highways in municipalities. *Rhodes v. Baker*, 116 Ga. App. 157, 156 S.E.2d 545 (1967).

Stop of defendant for parking in middle of road proper. — Trial court order suppressing drug evidence seized after a Terry stop of the defendant for parking in the middle of the road was error because O.C.G.A. § 40-6-200(a) made it improper to park in the middle of a two-way roadway and provided a proper basis for the officer's decision to stop the defendant. *Stafford v. State*, 284 Ga. 773, 671 S.E.2d 484 (2008).

Parking found in violation. — Parking of a vehicle so that a substantial portion thereof was within 12 feet of the highway's center line was a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see O.C.G.A. § 40-6-203) and was negligence per se. *Washington v. Kemp*, 99 Ga. App. 635, 109 S.E.2d 294 (1959).

Cited in *Malpass v. State*, 173 Ga. App. 690, 327 S.E.2d 753 (1985); *Roberts v. State*, 242 Ga. App. 120, 527 S.E.2d 617 (2000); *Momodu v. State*, 2003 Ga. App. LEXIS 629 (May 21, 2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 303, 312, 313.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 751 et seq., 761, 762 et seq.

ALR. — Right to admission to parking ground or to service at gas station or garages, 35 ALR 557.

Validity of automobile parking ordinances or regulations, 108 ALR 1152; 130 ALR 316.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 ALR2d 582.

Duties and liabilities between owners or drivers of parked or parking vehicles, 25 ALR2d 1224.

Civil liability of mobile vendor for attracting into street child injured by another's motor vehicle, 84 ALR3d 826.

40-6-201. Leaving motor vehicle unattended.

Reserved. Repealed by Ga. L. 2007, p. 214, § 3, effective July 1, 2007.

Editor's notes. — This Code section was based on Code 1933, § 68A-1101, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.

Ga. L. 2007, p. 214, § 4/HB 144, not codified by the General Assembly, pro-

vides, in part, that prosecutions for or cases involving any violation of law occurring prior to July 1, 2007, shall not be affected by the repeals or amendments made by that Act or abated by reason thereof.

40-6-202. Stopping, standing, or parking outside of business or residential districts.

Outside of a business or residential district, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the roadway when it is practicable to stop, park, or so leave such vehicle off the roadway; but in every event, an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles, and a clear view of the stopped vehicle shall be available from a distance of 200 feet in each direction upon the highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 90; Code 1933, § 68A-1001, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For comment on *Roberts v. Phillips*, 35 Ga. App. 733, 134 S.E. 837 (1926), see 1 Ga. B.J. 49 (1927).

JUDICIAL DECISIONS

Applicability. — Injured party was not entitled to a requested jury instruction under O.C.G.A. § 40-6-202 because that section did not apply to a momentary stopping of a motor vehicle on a highway as occurred in this case, but the statute instead applied to where stopping or parking impeded the safe flow of traffic. *Cox v. Allen*, 256 Ga. App. 53, 567 S.E.2d 363 (2002).

Applicability regarding school buses. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 is not applicable to school buses while being used for transportation of school children. *Stroud v. Doolittle*, 213 Ga. 32, 96 S.E.2d 876 (1957).

Evidence sufficient for conviction. — Defendant's conviction for improper stopping in violation of O.C.G.A. § 40-6-202 was based on sufficient evidence as the fact that the vehicle was blocking only one lane of traffic, rather than the entire street, was adequate because the vehicle was not legally parked for purposes of § 40-6-202; further, because the defendant was sitting in the driver's seat of the car with a suspended license, which the defendant clearly knew about because the defendant had received citations for driving with a suspended license previously, there was sufficient circumstantial evidence to convict the defen-

dant of driving without a valid license in violation of O.C.G.A. § 40-5-121. *Marsengill v. State*, 275 Ga. App. 840, 622 S.E.2d 58 (2005).

Evidence insufficient for conviction. — Evidence was insufficient to support a conviction for improper stopping, standing, or parking outside of a business or residential district because the state failed to adduce evidence that the defendant was parked outside of a business or residential district by merely presenting evidence that the defendant was parked within a residential or business area. *Darwicki v. State*, 291 Ga. App. 239, 661 S.E.2d 859 (2008).

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver had "parked" the truck, but that the truck came to a stop of the truck's own volition. *White v. Scott*, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Negligence per se instruction supported by evidence. — Defendant truck driver's admission of violating O.C.G.A.

§ 40-6-202, that the defendant parked without using reflective triangles, allowed plaintiff car driver's Fed. R. Civ. P. 50 motion to be granted to instruct the jury that the truck driver was negligent; that the truck driver intentionally parked the driver's truck in violation of § 40-6-202 was sufficient for negligence per se. *McPherson v. Rowe*, No. 09-13007, 2010 U.S. App. LEXIS 2964 (11th Cir. Feb. 16, 2010) (Unpublished).

Suppression motion improperly granted. — Trial court erroneously granted suppression of the evidence seized in a traffic stop involving two defendants in which an officer, after arresting the first defendant for obstruction, searched the car and found a substance which a field test showed to be cocaine as the stopping officer was authorized to make the stop based on a violation of O.C.G.A. § 40-6-202 and because the officer could search the passenger compartment of the car incident to the arrest of the first defendant. *State v. Stafford*, 288 Ga. App. 309, 653 S.E.2d 750 (2007), *aff'd*, 284 Ga. 773, 671 S.E.2d 484 (2008).

Cited in *Wallace v. Ener*, 521 F.2d 215 (5th Cir. 1975); *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980); *Blake v. Continental S.E. Lines*, 161 Ga. App. 869, 289 S.E.2d 551 (1982); *Reliance Ins. Co. v. Bridges*, 168 Ga. App. 874, 311 S.E.2d 193 (1983); *Chinnis v. State*, 240 Ga. App. 518, 523 S.E.2d 924 (1999); *Welch v. State*, 263 Ga. App. 70, 587 S.E.2d 220 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Officers removing vehicles personally liable for gross negligence. — Peace officers who cause vehicles to be removed from the public roadway are per-

sonally liable for those acts which constitute gross negligence with respect to the vehicle. 1974 Op. Att'y Gen. No. 74-99.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 303.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 751 et seq., 762 et seq.

ALR. — Validity of automobile parking ordinances or regulations, 108 ALR 1152; 130 ALR 316.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 ALR2d 582.

40-6-203. Stopping, standing, or parking prohibited in specified places; stopping or standing for collecting municipal solid waste or recovered materials.

(a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(1) Stop, stand, or park a vehicle:

(A) On the roadway side of any vehicle stopped or parked at the edge of a curb of a street;

(B) On a sidewalk;

(C) Within an intersection;

(D) On a crosswalk;

(E) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(F) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(G) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(H) On any railroad tracks;

(I) On any controlled-access highway;

(J) In the area between roadways of a divided highway, including crossovers; or

(K) At any place where official signs prohibit stopping;

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(A) In front of a public or private driveway;

(B) Within 15 feet of a fire hydrant;

(C) Within 20 feet of a crosswalk at an intersection;

(D) Within 30 feet upon the approach to any flashing signal, stop sign, yield sign, or traffic-control signal located at the side of a roadway;

(E) Within 20 feet of the driveway entrance to any fire station or on the side of a street opposite the entrance to any fire station within 75 feet of such entrance (when properly posted); or

(F) At any place where official signs prohibit standing; or

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

(A) Within 50 feet of the nearest rail of a railroad crossing; or

(B) At any place where official signs prohibit parking.

(b) No person shall move a vehicle not lawfully under his control into any prohibited area or to such a distance away from the curb as is unlawful.

(c) Notwithstanding any other provision of law, any vehicle used solely for the purpose of collecting municipal solid waste or recovered materials as defined in Code Section 12-8-22 may stop or stand on the road, street, or highway for the sole purpose of collecting such waste or materials; provided, however, that such vehicle shall maintain flashing hazard lights at all times that it is engaged in stopping or standing for the purpose of waste or materials collection. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 92; Code 1933, § 68A-1003, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 639, § 1.)

Cross references. — Right of person to have removed any car parked without authorization upon property possessed by such person, § 44-1-13.

Law reviews. — For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

JUDICIAL DECISIONS

“Stop, stand, or park” a vehicle. — Trial court properly charged the jury that “no person shall stop, stand, or park a vehicle on any controlled-access highway,” since the evidence presented an inference from which the jury could have found that the driver was in the process of stopping or had come to a rolling stop at the time of the collision. *Morris v. DeLong*, 183 Ga. App. 124, 358 S.E.2d 285 (1987).

O.C.G.A. § 40-6-203 prohibits any halting, even if momentary, of a vehicle on a controlled-access highway except when necessary to keep from striking other traffic or to comply with the directions of a police officer or traffic-control signal or sign. The statute is definite and certain in the statute’s meaning, and men of common intelligence would not differ as to the application of the statute’s provisions.

Conyers v. State, 260 Ga. 506, 397 S.E.2d 423 (1990).

Violation of statute is negligence per se. — In a negligence action, where a driver arrived at the scene of an existing accident, parked in the emergency lane, turned on the driver’s emergency blinkers, and exited the driver’s vehicle, and a second vehicle hit the parked vehicle and then went off into a ravine, killing the driver, the trial court’s denial of summary judgment in favor of the first driver was proper; parking in the emergency lane of a limited access highway was negligence per se. *Storer Communications, Inc. v. Burns*, 195 Ga. App. 230, 393 S.E.2d 92 (1990).

Violation constituting actionable negligence. — Before violation constitutes actionable negligence, it must be for the protection of a class of persons of

which the plaintiff is a member. *Kibbey Chevrolet, Inc. v. Anderson*, 111 Ga. App. 90, 140 S.E.2d 564 (1965).

Purpose of prohibitions against crosswalk parking. — Statutory prohibitions against parking on a crosswalk were intended to guard against the hazard to users of the streets caused by pedestrians having to enter and cross at places where there are obstructions in the street. *Archer Plumbing & Heating Co. v. Dodys*, 112 Ga. App. 355, 145 S.E.2d 277 (1965).

Violation not negligence as to one striking rear of parked carrier. — Because the purpose of Ga. L. 1953, Nov.-Dec. Sess., p. 556 prohibiting parking in an intersection or within 20 feet of a crosswalk at an intersection is to prevent intersection collisions and hazards of obstructions to sight between pedestrians and motorists by parked vehicles, the violation of those provisions would in no way be negligence as to one striking the rear of a parked carrier. *Kibbey Chevrolet, Inc. v. Anderson*, 111 Ga. App. 90, 140 S.E.2d 564 (1965).

Parking found in violation. — Parking of a vehicle so that a substantial portion thereof was within 12 feet of the center line of the highway was a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556, and was negligence per se. *Washington v. Kemp*, 99 Ga. App. 635, 109 S.E.2d 294 (1959).

Parked garbage truck. — Compliance with Georgia's Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq., did not necessarily demonstrate that a defendant exercised ordinary care; in a case seeking damages for injuries arising from an accident in which an auto struck a parked garbage truck, a trial court did not err in admitting evidence regarding a safer location for the stop of the truck or in refusing to instruct the jury that if the truck's flashing hazard lights were on at the time of the collision, then, pursuant to O.C.G.A. § 40-6-203(c), the driver and the employer could not have been found negligent. *Sinclair Disposal Serv. v. Ochoa*, 265 Ga. App. 172, 593 S.E.2d 358 (2004).

Oncoming driver failing to keep proper lookout. — Oncoming driver's conduct in failing to keep proper lookout,

simply because it constituted the violation of a public law, was not of such nature as to relieve the defendants of the consequence of their unlawful act in leaving the truck parked upon and within 12 feet of the center of the highway; in order for the driver's negligence to insulate the defendants from liability it must have been such as the defendants could not have reasonably anticipated at the time the defendants created the perilous situation by leaving the truck standing on the highway. *Pittman v. Staples*, 95 Ga. App. 187, 97 S.E.2d 630 (1957).

Drivers may stop school buses within less than 12 feet. — School bus drivers are accorded the right to stop their buses on the pavement and within less than 12 feet of the center line of the highway for the purpose of receiving or discharging school children. *Stroud v. Doolittle*, 213 Ga. 32, 96 S.E.2d 876 (1957).

Emergency lanes. — Because a situation in which a truck driver witnessed an accident on a highway in which two vehicles veered off the road into a ravine presented an emergency, the truck driver's act of stopping in an emergency lane to run into the ravine to provide assistance was in compliance with O.C.G.A. § 40-6-50(b), and not in violation of O.C.G.A. § 40-6-203. *Reid v. Midwest Transp.*, 270 Ga. App. 557, 607 S.E.2d 170 (2004).

No basis for stop. — Because the government did not allege that the defendant stopped the defendant's vehicle under any of the particular circumstances listed in O.C.G.A. § 40-6-203, there was no traffic basis on which the officer could have had probable cause to stop the defendant's vehicle. *United States v. Lopez-Garcia*, 565 F.3d 1306 (11th Cir. 2009), cert. denied, 558 U.S. 1092, 130 S. Ct. 1012, 175 L. Ed. 2d 620 (2009).

Cited in *Wallace v. Ener*, 521 F.2d 215 (5th Cir. 1975); *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980); *Blake v. Continental S.E. Lines*, 161 Ga. App. 869, 289 S.E.2d 551 (1982); *Garrett v. Brannen*, 164 Ga. App. 10, 296 S.E.2d 205 (1982); *Robinson v. Metropolitan Atlanta Rapid Transit Auth.*, 197 Ga. App. 628, 399 S.E.2d 252 (1990); *Roberts v. State*,

242 Ga. App. 120, 527 S.E.2d 617 (2000); Dial v. Natalizi, 246 Ga. App. 97, 539 S.E.2d 617 (2000); Gantt v. State, 263 Ga.

App. 102, 587 S.E.2d 255 (2003); Ingram v. State, 286 Ga. App. 436, 649 S.E.2d 576 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 303, 315 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 751 et seq., 762 et seq.

ALR. — Driving automobile across track in front of street car that has stopped to take on or let off passengers as negligence or contributory negligence, 14 ALR 811.

Right to admission to parking ground or to service at gas station or garages, 35 ALR 557.

Parking at improper place as affecting liability for automobile accident, 73 ALR 1074.

Validity of automobile parking ordinances or regulations, 108 ALR 1152; 130 ALR 316.

Stopping vehicle on traveled portion of highway as affecting responsibility for collision between vehicles, 131 ALR 562.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 ALR2d 582.

Criminal responsibility of motor vehicle operator for accident arising from physical defect, illness, drowsiness, or falling asleep, 63 ALR2d 983.

Applicability of *res ipsa loquitur* doctrine where motor vehicle stops on highway, 79 ALR2d 153.

Civil liability of mobile vendor for attracting into street child injured by another's motor vehicle, 84 ALR3d 826.

40-6-204. Exception as to disabled vehicles.

Code Sections 40-6-200, 40-6-202, and 40-6-203 shall not apply to the driver of any vehicle which is disabled while on the roadway in such a manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 90; Code 1933, § 68A-1001, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1938, p. 295 are included in the annotations for this Code section.

Standard for determining emergency stop. — Standard to be applied in determining whether the operator has made an emergency stop on the public highway is whether an ordinarily prudent man, under the same or similar circumstances, and with the same information available to the operator as to conditions to be considered in determining where the stop should be made, would have acted in the same manner. Smith v. Nelson, 123

Ga. App. 712, 182 S.E.2d 332 (1971) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Positioning vehicle in lawful area. — Although there may be no sufficient space at the immediate point of the emergency, yet if the vehicle can consistently with law and common prudence be moved to some other area where lawful space may be had, the driver should under the law pursue the latter course. Potts v. Sessions, 77 Ga. App. 259, 48 S.E.2d 561 (1948) (decided under Ga. L. 1939, p. 295).

Section applicable where driver indicates brakes unsafe. — Charging the jury on O.C.G.A. § 40-6-204 was proper

after the driver of a truck indicated that the condition of the driver's brakes made it impossible for the driver to effect a safe stop. *Grogan v. Bennett*, 208 Ga. App. 102, 430 S.E.2d 94 (1993).

Cited in *Wallace v. Ener*, 521 F.2d 215 (5th Cir. 1975); *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980); *Blake v.*

Continental S.E. Lines, 161 Ga. App. 869, 289 S.E.2d 551 (1982); *Brown v. Shiver*, 183 Ga. App. 207, 358 S.E.2d 862 (1987); *Robinson v. Metropolitan Atlanta Rapid Transit Auth.*, 197 Ga. App. 628, 399 S.E.2d 252 (1990); *Dial v. Natalizi*, 246 Ga. App. 97, 539 S.E.2d 617 (2000).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 759.

ALR. — Negligence or contributory

negligence of driver or occupant of motor vehicle parked or stopped on highway without flares, 67 ALR2d 12.

40-6-205. Obstructing intersection.

No driver shall enter an intersection unless there is sufficient space on the other side of the intersection to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed. (Code 1933, § 68A-1005, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — What is a street or highway intersection within traffic rules, 7 ALR3d 1204.

40-6-206. When police officers may remove vehicles.

(a) Whenever any police officer finds a vehicle in violation of any of the provisions of Code Section 40-6-202, such officer is authorized to move such vehicle or require the driver or other person in charge of the vehicle to move it to a position off the roadway.

(b) Any police officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any highway, bridge, or causeway or in any tunnel.

(c) Any police officer is authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

(1) Report has been made that such vehicle has been stolen or taken without the consent of its owner;

(2) The person or persons in charge of such vehicle are unable to provide for its custody or removal;

(3) The person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay;

(4) Any such vehicle has been left unattended for 24 hours or more; or

(5) Such vehicle is stopped, except when traffic congestion makes movement impossible, on a controlled-access highway which is part of The Dwight D. Eisenhower System of Interstate and Defense Highways for more than eight hours, unless such vehicle constitutes a traffic hazard, in which case it may be removed immediately.

(d) Because uninsured vehicles pose a threat to the public safety and health, any law enforcement officer is authorized to remove or cause to be removed to the nearest garage or other place of safety the vehicle of a person who is charged under subsection (a) or (b) of Code Section 40-6-10 if such person admits to the law enforcement officer that there is no insurance in effect on the vehicle or if the law enforcement officer verifies that the proof of insurance provided by such person is fraudulent. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 91; Code 1933, § 68A-1002, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1286, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 542, § 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 136, § 40.)

Cross references. — Right of person to have removed any car parked without authorization upon property possessed by such person, § 44-1-13.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, a comma

was deleted following “Defense Highways” in paragraph (c)(5).

Law reviews. — For comment on *Wilkinson v. Townsend*, 96 Ga. App. 179, 99 S.E.2d 539 (1957), see 9 Mercer L. Rev. 372 (1958).

JUDICIAL DECISIONS

No lien arises under Ga. L. 1953, Nov.-Dec., Sess., p. 556, and detention of the automobile by the garage against the demands of the owner amounts to a conversion. *Wilkinson v. Townsend*, 96 Ga. App. 179, 99 S.E.2d 539 (1957) commented on in 9 Mercer L. Rev. 372 (1958).

Indefinite retention of vehicles not authorized. — Enforcement officers initially authorized to remove or impound a vehicle do not have a duty to retain pos-

session indefinitely; the statutes require only the removal to a “garage or other place of safety,” not necessarily into the custody of the authorities, and there is nothing about the vehicle’s ultimate disposition. *Strickland v. Vaughn*, 221 Ga. App. 636, 472 S.E.2d 159 (1996).

Cited in *State v. Lamb*, 202 Ga. App. 69, 413 S.E.2d 511 (1991); *Ahmad v. State*, 312 Ga. App. 703, 719 S.E.2d 563 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Possible liability of officers removing vehicles personally liable for

gross negligence. — Peace officers who cause vehicles to be removed from the

public roadway are personally liable for those acts which constitute gross negli-

gence with respect to the vehicle. 1974 Op. Att’y Gen. No. 74-99.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 311.
C.J.S. — 60 C.J.S., Motor Vehicles, § 63.
 60A C.J.S., Motor Vehicles, §§ 789, 790.
ALR. — Lien for towing or storage,

ordered by public officer, of motor vehicle, 85 ALR3d 199.
 State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways, 32 ALR4th 728.

40-6-207. Liability of owner for traffic or parking violations occurring while vehicle leased to another; duty of owner to attend hearing on the offense; improper vehicle maintenance.

(a) The owner of any motor vehicle leased to another shall not be liable for a state, county, or municipal traffic or parking violation occurring while such leased vehicle was not in the owner’s possession or control, if upon notice of the violation the owner notifies the clerk of the court in which the case is pending of the name and address of the lessee of the vehicle on the date the violation occurred. If the owner fails to submit the notice, the court in which the case is heard may find the owner of the motor vehicle liable for the violation.

(b) After providing the name and address of the lessee, the owner shall not be required to attend a hearing on the offense, unless notified that the offense occurred through a mechanical failure of the vehicle which resulted from the owner’s failure to maintain the vehicle.

(c) The owner of any leased vehicle shall be liable for any violation which was caused by the owner’s failure to maintain the vehicle properly. The lessee claiming the violation resulted from the owner’s failure to maintain the vehicle properly shall notify the clerk of the court in which the case is pending along with the owner of the vehicle of the claim within seven days after receiving notice of the violation or at least ten days prior to the date the case will be heard by the court, whichever is later. (Code 1933, § 68A-1005.1, enacted by Ga. L. 1981, p. 1004, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Bailments, § 44-12-40 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 884, 886.
C.J.S. — 60A C.J.S., Motor Vehicles, §§ 778, 779.

ALR. — Construction and application of statute imposing liability expressly upon motor vehicle lessor for damage caused by operation of vehicle, 41 ALR4th

993.

State regulation of motor vehicle rental
("you-drive") business, 60 ALR4th 784.

40-6-208. Parking areas for passengers of rapid rail or public transit buses; violations.

(a) In all parking lots, parking decks, and other such facilities owned or operated by any public transit authority or established for the exclusive purpose of providing parking for passengers of rapid rail or public transit buses, it shall be unlawful to:

(1) Stop, stand, or park a vehicle other than in marked spaces designed for that purpose;

(2) Stop, stand, or park a vehicle on any yellow curb;

(3) Stop, stand, or park a vehicle in any location which results in impeding ingress or egress to said facility or which results in impeding the free passage of any other vehicle;

(4) Leave any vehicle unattended in areas designated as "kiss-ride" or designated as "attended vehicles only";

(5) Stop, stand, or park any taxicab or other vehicle for hire, whether attended or unattended, in any area not specifically designated for such vehicles;

(6) Stop, stand, or park any vehicle for the purpose of loading or unloading passengers, except in areas specifically designated for that use, such as "kiss-ride" or "passenger drop-off" areas;

(7) Stop, stand, or park any vehicle for a period in excess of 24 hours unless such parking area is designated "overnight" or "long-term" parking;

(8) Stop, stand, or park any vehicle for any purpose other than to board the rapid rail car or public transit bus serving such parking lot; or

(9) Create or maintain any fire or flame, including fires or flames for cooking or grilling, or to fail to extinguish said fire or flame and to remove from such public transit parking facility all debris and residue associated with the creation and maintenance of said fire or flame.

(b) Any person violating subsection (a) of this Code section shall be subject to a fine levied by the municipality or, in the case of properties located outside the boundaries of a municipality, by the county in which the offense occurs. Such offense shall be cited by the issuance of a written citation which shall be left on the violator's vehicle and which shall contain, at a minimum:

- (1) The nature of the violation;
- (2) The amount of the fine which will be levied for such violation;
- (3) That the cited individual has the right to contest the citation and be given an opportunity to be heard;
- (4) The location of the court in which the cited individual must appear within five days of the date of the citation to contest same; and
- (5) The location at which fines may be paid.

(c) Nothing in this Code section shall be construed to limit the enforcement of any other provision of state law which may be applicable, including, but not limited to, Part 2 of this article, the "Parking Law For Persons With Disabilities," and the uniform rules of the road. (Code 1981, § 40-6-208, enacted by Ga. L. 1998, p. 890, § 3.)

PART 2

PARKING FOR PERSONS WITH DISABILITIES

Cross references. — Access to public facilities by the handicapped, T. 30, C. 3. ans, § 40-2-69 et seq. Special license plates for disabled persons, § 40-2-74. Special license plates for disabled veter-

40-6-220. Short title.

This part shall be known and may be cited as the "Parking Law for Persons with Disabilities." (Code 1933, § 68A-1020, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8.)

40-6-221. Definitions.

As used in this part, the term:

- (1) "Counterfeit" means any copy of any kind of parking permit for persons with disabilities which is not authorized by and does not carry the official seal of the Department of Revenue.
- (2) "Institution" means an institution for which a permit or conditional permit may be issued under Article 1 of Chapter 7 of Title 31.
- (3) "Parking place for persons with disabilities" means any area on public or private property which has been designated as reserved for use of persons with disabilities as follows:

(A) By a blue metal reflective sign which is at least 12 inches in width and 18 inches in length and is erected at a height of seven feet from the bottom of the sign to its ground surface and in such manner that it will not be obscured by a vehicle parked in the space and bearing the following words: "Permit Parking Only,"

"Tow-Away Zone," and the international symbol for accessibility. The warnings required in this subparagraph shall be centered on the sign, printed in white, and shall occupy not less than 75 percent of the surface area of the sign. The sign required by this subparagraph shall be the official authorized sign for parking place designations for persons with disabilities in this state. In addition, parking spaces which are required by Code Section 30-3-6 shall be designated as "For Disabled Persons With Ambulatory Assistive Devices Only"; or

(B) Where the parking place is on private property, is constructed solely from concrete, was used by the public or finished prior to July 1, 1987, and which is designated by having imprinted and maintained in reflective paint upon each such place the words "Tow-Away Zone" or "Parking Only for Persons with Disabilities" or the universal symbol of accessibility, that designation shall be deemed to meet the requirements of subparagraph (A) of this paragraph until such time as that concrete lot is renovated, repaired, or remodeled, at which time a sign shall be erected which shall comply with the requirements of subparagraph (A) of this paragraph.

(4) "Permanently disabled person" means a person with disabilities whose disability or incapacity can be expected to last for more than 180 days.

(5) "Person with disabilities" means a person who:

(A) Is so ambulatorily disabled that he or she cannot walk 200 feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, a cane, a crutch, another person, a prosthetic device, a wheelchair, or other assistive device;

(C) Is restricted by lung disease to such an extent that his or her forced respiratory volume for one second, when measured by spirometry, is less than one liter, or when at rest, his or her arterial oxygen tension is less than 60 millimeters of mercury on room air;

(D) Uses portable oxygen;

(E) Has a cardiac condition to the extent that his or her functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association;

(F) Is severely limited in his or her ability to walk due to an arthritic, neurological, or orthopedic condition or complications due to pregnancy; or

(G) Is a blind individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose

visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(5.1) “Practitioner of the healing arts” means a person holding a license to practice medicine, podiatric medicine, or chiropractic issued pursuant to Article 2 of Chapter 34 of Title 43, Chapter 35 of Title 43, or Chapter 9 of Title 43, respectively.

(6) “Ramp” shall mean, in addition to any other specified meanings:

(A) Any ramp or curb ramp as defined in ANSI A117.1-1986 by Chapter 3 of Title 30; and

(B) Any vehicle mounted lift used by handicapped persons for the purpose of access to and from the vehicle upon which it is mounted.

(7) “Temporarily disabled person” means a person with disabilities whose disability or incapacity can be expected to last for not more than 180 days and shall include, but not be limited to, any woman who is pregnant and who presents a sworn affidavit of a medical doctor attesting to a medical need for access to parking for persons with disabilities. (Code 1933, § 68A-1021, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 677, § 1; Ga. L. 1984, p. 1263, § 1; Ga. L. 1987, p. 1439, § 1; Ga. L. 1988, p. 1460, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 1394, § 1; Ga. L. 1995, p. 1302, § 8; Ga. L. 2000, p. 951, § 5A-2; Ga. L. 2000, p. 1182, § 2; Ga. L. 2004, p. 619, § 1; Ga. L. 2005, p. 334, § 18-4/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, former paragraphs (0.1) through (5) were redesignated as present paragraphs (1) through (7), in order to delete the decimal number paragraph designations originally given

to maintain the alphabetical organization of the defined terms.

Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following “limited to” in paragraph (7).

40-6-222. Permits.

Reserved. Repealed by Ga. L. 2006, p. 659, § 2, effective May 1, 2006.

Code Commission notes. — The amendment of this Code section by Ga. L. 2006, p. 535, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 659, § 2/HB 1217. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor’s notes. — This Code section was based on Code 1933, § 68A-1022,

enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 624, § 1; Ga. L. 1981, p. 677, § 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 1464, § 2; Ga. L. 1988, p. 1460, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8; Ga. L. 2000, p. 951, § 5A-3; Ga. L. 2000, p. 1182, § 3; Ga. L. 2004, p. 619, § 2; Ga. L. 2005, p. 334, § 18-5/HB 501; Ga. L. 2005, p. 636, § 1/SB 267.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 1B Am. Jur. Pleading and Practice Forms, Affidavits, § 2.

40-6-223. Fees.

Reserved. Repealed by Ga. L. 2006, p. 659, § 3, effective May 1, 2006.

Editor's notes. — This Code section was based on Code 1933, § 68A-1023, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 677, § 3; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8; Ga. L. 2000, p. 951, § 5A-4; Ga. L. 2005, p. 334, § 18-6/HB 501.

40-6-224. Out-of-state handicapped or persons with disabilities license plates or permits.

State and local authorities shall honor visitors' out-of-state handicapped license plates or persons with disabilities license plates and similar special parking permits on the same basis as license plates for persons with disabilities and special parking permits issued within this state. (Code 1933, § 68A-1024, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 677, § 4; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8.)

40-6-224.1. Handicapped parking places for the nonambulatory.

Repealed by Ga. L. 1990, p. 2048, § 5, effective January 1, 1991.

Editor's notes. — This Code Section was based on Ga. L. 1989, p. 572, § 1. For present provisions pertaining to parking for persons with disabilities for the non-ambulatory, see Code Section 40-6-225.

40-6-225. Parking places for persons with disabilities for the nonambulatory.

Any business entity may elect to designate parking places for persons with disabilities for the nonambulatory. Such parking places for the nonambulatory shall be in addition to any parking places for persons with disabilities required by Chapter 3 of Title 30. Such parking places for the nonambulatory shall be clearly marked by a sign bearing the words "Parking for Persons with Disabilities — nonambulatory persons only." Such parking places for the nonambulatory shall be utilized only for the purpose of allowing a nonambulatory permanently disabled person to enter or exit a vehicle while in such parking place. A vehicle in a parking place for the nonambulatory shall be required to have a valid unexpired parking permit for persons with disabilities or a specially designated license plate for disabled persons authorized under Code Section 40-2-74 or 40-2-74.1. For the purposes of this Code section, the term "nonambulatory permanently disabled person" means a per-

son who is permanently disabled as a result of the loss or loss of use of one or both legs and who is dependent upon crutches, a walker, or a wheelchair for locomotion. (Code 1981, § 40-6-224.1, enacted by Ga. L. 1989, p. 572, § 1; Code 1981, § 40-6-225, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8; Ga. L. 2006, p. 659, § 4/HB 1217; Ga. L. 2007, p. 47, § 40/SB 103.)

40-6-226. Offenses and penalties.

(a) It shall be unlawful for any person to stop, stand, or park any vehicle in a parking place for persons with disabilities unless there is displayed on the driver's side of the dashboard or hung from the rearview mirror of the parked vehicle a valid unexpired parking permit for persons with disabilities or unless there is attached to the vehicle a specially designated license plate for disabled veterans or other disabled persons authorized under Code Section 40-2-74 or 40-2-74.1 and unless such person is the person to whom such permit or license plate was issued; the person to whom such permit or license plate was issued is a passenger in the vehicle; or such vehicle is being used for the transportation of disabled passengers on behalf of the institution to which such permit was issued.

(a.1) It shall be unlawful for any person to stop, stand, or park any vehicle in a parking place for persons with disabilities which is designated "For Persons With Disabled Ambulatory Assistive Devices Only" unless:

(1) There is displayed on the driver's side of the dashboard or hung from the rearview mirror of the parked vehicle a valid unexpired parking permit for persons with disabilities or unless there is attached to the vehicle a specially designated license plate for disabled veterans or other disabled persons authorized under Code Section 40-2-74 or 40-2-74.1; and

(2) A person with disabilities who is using a wheelchair, crutches, walker, or other ambulatory assistive device is the driver of or a passenger in such vehicle.

(b)(1) It shall be unlawful for any person to stop, stand, or park any vehicle in a parking place for persons with disabilities except for the purpose of allowing a disabled person to enter or get out of such vehicle while in such parking place. However, nothing in this paragraph shall prevent an ambulance or emergency vehicle from stopping in a parking place for persons with disabilities.

(2) It shall be unlawful for any person to stop, stand, or park any vehicle in a parking place for the nonambulatory as provided by a business pursuant to the provisions of Code Section 40-6-225 except

for the purpose of allowing a nonambulatory permanently disabled person to enter or get out of such vehicle while in such parking place. However, nothing in this paragraph shall prevent an ambulance or emergency vehicle from stopping in a parking place for the nonambulatory.

(3) It shall be unlawful for any person to stop, stand, or park any vehicle in any area directly connecting with a parking place for persons with disabilities which area is clearly designed and designated for access to such parking place for persons with disabilities.

(c) It shall be unlawful for any person to obtain by fraud or counterfeited a parking permit for persons with disabilities.

(c.1) It shall be unlawful for any person to knowingly and willfully make a false or misleading statement in an application for a parking permit for persons with disabilities or in the affidavit of a practitioner of the healing arts stating that an applicant is a disabled person.

(d) It shall be unlawful for any person or institution, other than the one to whom a parking permit for persons with disabilities or specially designated license plate for the disabled person is issued, to make use of a parking permit for persons with disabilities or specially designated license plate for a disabled person unless the person to whom such permit or license plate was issued is a passenger in such vehicle. It shall be unlawful for any person to use a parking permit for persons with disabilities for any institutional vehicle other than the vehicle for which the permit has been issued. It shall be unlawful for any person to use a parking permit for persons with disabilities issued to an institution for any purpose other than to transport disabled persons.

(e) No person shall park a vehicle so as to block any entrance or exit ramp used by persons with disabilities on public or private property.

(f)(1) Any person violating subsection (c) or (c.1) of this Code section shall be guilty of a misdemeanor.

(2) Any person violating subsection (a), (a.1), (b), (d), or (e) of this Code section shall be subject to a fine of not less than \$100.00 and not more than \$500.00.

(g) In addition to the penalties provided for in subsection (f) of this Code section, any vehicle which is illegally parked in a parking place for persons with disabilities which is marked by a sign bearing the words "Tow-Away Zone" as described in paragraph (3) of Code Section 40-6-221 on public or private property may be towed away or caused to be towed away by a proper law enforcement agency or the official security agency of said property at the expense of the owner of the vehicle or, if the vehicle is leased or rented, at the expense of the person responsible for payment on the lease or rental agreement.

(h) A property owner who is required to provide parking places for persons with disabilities shall designate each such place with a sign meeting the applicable requirements specified therefor by paragraph (3) of Code Section 40-6-221 and upon failure so to designate each such parking place for persons with disabilities shall be subject to a fine of \$150.00 for each place which is not so designated; provided, however, that the fine will be waived if the required designation is made within 14 days from the date of citation. If that property owner fails or refuses to designate properly the parking places for persons with disabilities within such 14 days, the property owner shall, on the fifteenth day after receiving the citation, be subject to the \$150.00 fine for each place and an additional \$5.00 fine for each place for each day that the owner fails to comply with provisions of this subsection until the places are properly designated. All fines assessed under this subsection shall be paid into the treasury of the city or county issuing the citation against the owner. (Code 1933, § 68A-1024, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 677, § 4; Code 1981, § 40-6-225; Ga. L. 1984, p. 1263, § 2; Ga. L. 1985, p. 558, § 1; Ga. L. 1987, p. 1439, §§ 2, 3; Ga. L. 1989, p. 572, § 2; Ga. L. 1990, p. 8, § 40; Code 1981, § 40-6-226, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1993, p. 707, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1995, p. 1302, § 8; Ga. L. 2000, p. 1182, § 4; Ga. L. 2005, p. 636, § 2/SB 267; Ga. L. 2006, p. 659, § 5/HB 1217.)

JUDICIAL DECISIONS

State court jurisdiction over handicapped space parking. — Because parking a vehicle in a handicapped parking space is a misdemeanor, criminal jurisdiction over this offense lies in the state courts of counties. *Burden v. State*, 176 Ga. App. 17, 335 S.E.2d 304 (1985).

Harm not element of offense. — O.C.G.A. § 40-6-226 does not require the harming of a particular individual in order for an offense to occur. *Burden v. State*, 176 Ga. App. 17, 335 S.E.2d 304 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offense. — Offense set forth in O.C.G.A. § 40-6-226, which prohibits the improper use of a handicapped parking space, permit, or license plate, does not fall within any of the

categories set forth by the General Assembly requiring fingerprinting and the Attorney General has not so designated the offense. 1984 Op. Att'y Gen. No. 84-44.

40-6-227. Application to both public and private property.

The provisions of this part are applicable to both public and private property; and all law enforcement officers of this state and its political subdivisions are expressly authorized to enforce the provisions of this part on private property as well as on public property. (Code 1981, § 40-6-226, enacted by Ga. L. 1984, p. 1263, § 3; Code 1981,

§ 40-6-227, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8.)

40-6-228. Enforcement.

(a) Any county or municipal law enforcement agency of the state which is empowered to enforce the provisions of this part may, in its discretion, appoint any person who is a citizen of the United States, is of good moral character, and has not previously been convicted of a felony to enforce the provisions of Code Section 40-6-226 within the county or municipality in which the appointing law enforcement agency exercises jurisdiction. Each person appointed pursuant to this Code section shall take and subscribe an oath of office as prescribed by the appointing authority. Any person appointed and sworn pursuant to this subsection shall be authorized to enforce the provisions of this part in the same manner as any law enforcement officer of the state or any county or municipality of the state subject to the limitations provided in subsections (b) and (c) of this Code section.

(b) No person appointed pursuant to subsection (a) of this Code section shall be deemed a peace officer under the laws of this state or:

(1) Be deemed an employee of or receive any compensation from the state, county, municipality, or appointing law enforcement agency, but the appointing law enforcement agency shall provide any person so appointed with a uniform consisting of a pith helmet and a windbreaker jacket which shall remain the property of the appointing law enforcement agency;

(2) Be required to complete any training or be certified pursuant to the requirements of Chapter 8 of Title 35;

(3) Have the power or duty to enforce any other traffic or criminal laws of the state, county, or municipality;

(4) Have the power to possess and carry firearms and other weapons for the purpose of enforcing the parking laws for persons with disabilities; provided, however, that a person who possesses a valid weapons carry license issued under Code Section 16-11-129 and who carries such weapon in a manner permitted under Code Section 16-11-126 shall not be in violation of this paragraph; or

(5) Be entitled to any indemnification from the state, county, or municipality for any injury or property damage sustained by such person as a result of attempting to enforce the parking laws of the state for persons with disabilities.

(c) Neither the state nor any county, municipality, or other political subdivision of the state or any department, agency, board, or officer of

the state or any county, municipality, or political subdivision of the state shall be liable or accountable for or on account of any act or omission of any person appointed pursuant to this Code section in connection with such person's enforcement of the provisions of Code Section 40-6-226. No person appointed pursuant to this Code section shall be liable on account of any act or omission in connection with such person's enforcement of the provisions of Code Section 40-6-226.

(d) It shall be unlawful for any person willfully to obstruct, resist, impede, or interfere with any person appointed pursuant to this Code section in connection with such person's enforcement of Code Section 40-6-226 or to retaliate or discriminate in any manner against such person as a reprisal for any act or omission of such person. Any violation of this subsection shall be punishable as a misdemeanor. (Code 1981, § 40-6-227, enacted by Ga. L. 1988, p. 389, § 1; Code 1981, § 40-6-228, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 504, § 1; Ga. L. 1995, p. 1302, § 8; Ga. L. 1997, p. 521, § 1; Ga. L. 2010, p. 524, § 1/HB 1338; Ga. L. 2010, p. 963, § 2-16/SB 308.)

Editor's notes. — Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any

prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 131 (2011).

ARTICLE 11

MISCELLANEOUS PROVISIONS

RESEARCH REFERENCES

ALR. — Duty in operating automobile at curve or on hill, 57 ALR 589.

Duty of operator of motor vehicle as affected by barrier placed to indicate that street is closed or undergoing repairs, 78 ALR 525.

Duty and liability of vehicle driver blinded by glare of lights, 22 ALR2d 292.

Inference or presumption that owner of motor vehicle was its driver at time of traffic, driving, or parking offense, 49 ALR2d 456.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle, 64 ALR3d 551; 64 ALR3d 760.

40-6-240. Backing.

(a) A driver shall not back a vehicle unless such movement can be made with safety and without interfering with other traffic.

(b) A driver of a vehicle shall not back a vehicle upon any shoulder or roadway of any controlled-access highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 94; Code 1933, § 68A-1102, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Backing must be “with safety” as well as without interference with traffic, and when a driver backs into another vehicle, the backing is not done “with safety,” regardless of whether that vehicle is moving or occupied. *State v. Nichols*, 225 Ga. App. 609, 484 S.E.2d 507 (1997).

Sufficient evidence to convict. — Officer’s testimony provided sufficient evidence to support the conviction for improper backing under O.C.G.A. § 40-6-240(a) as the officer testified that the defendant backed 10 to 15 yards up a hill on a busy one-way street, and the defendant would have had difficulty seeing cars behind the defendant due to the crest of the hill. *Jones v. State*, 259 Ga. App. 506, 578 S.E.2d 165 (2003).

As predicate for investigatory stop. — Sufficient circumstantial evidence was introduced to convict the defendant of being a felon in possession of a firearm during a drug trafficking crime under 18 U.S.C. §§ 922(g)(1) and 924(c)(1)(A) because a pistol was found, along with drugs, inside the defendant’s car alongside the driver’s seat, after police stopped

the car for improper backing, a violation of O.C.G.A. § 40-6-240(a). *United States v. Hamilton*, 299 Fed. Appx. 878 (11th Cir. 2008) (Unpublished).

Suppression motion based on reasonable suspicion of violation of O.C.G.A. § 40-6-240(a). — Denial of the defendant’s suppression motion was upheld on appeal as: (1) the defendant’s vehicle was not stopped by the investigating officer; (2) the defendant voluntarily pulled into a driveway and stopped; (3) the officer did not prevent the defendant’s departure; and (4) the officer had a reasonable and objective basis to conclude that the defendant committed the traffic offense of improper backing in violation of O.C.G.A. § 40-6-240(a). *Collier v. State*, 282 Ga. App. 605, 639 S.E.2d 405 (2006), cert. denied, 2007 Ga. LEXIS 217 (Ga. 2007).

Cited in *Pfeiffer v. State*, 173 Ga. App. 374, 326 S.E.2d 562 (1985); *Roberson v. State*, 230 Ga. App. 179, 495 S.E.2d 643 (1998); *Holland v. State*, 240 Ga. App. 169, 523 S.E.2d 33 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 227.

C.J.S. — 60A C.J.S., Motor Vehicles, § 695.

ALR. — Duties and liabilities between owners or drivers of parked or parking vehicles, 25 ALR2d 1224.

Liability for injury occasioned by backing of motor vehicle in public street or highway, 63 ALR2d 5.

Liability for injury occasioned by backing of motor vehicle from private premises into public street or highway, 63 ALR2d 108.

Liability for injury or damage occasioned by backing of motor vehicle within private premises, 63 ALR2d 184.

40-6-241. Driver to exercise due care; proper use of radios and mobile telephones allowed.

A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions which shall distract such driver from the safe operation of such vehicle, provided that, except as prohibited by Code Sections 40-6-241.1 and 40-6-241.2, the proper use of a radio, citizens band radio, mobile telephone, or amateur or ham radio shall not be a violation of this Code section. (Code 1933, § 68A-1103, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p.

2048, § 5; Ga. L. 2010, p. 1156, § 2/HB 23; Ga. L. 2010, p. 1158, § 3/SB 360.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “Code Sections 40-6-241.1 and 40-6-241.2” was substituted for “Code Section 40-6-241.1” in this Code section.

Editor’s notes. — Ga. L. 2010, p. 1156, § 4/HB 23, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to offenses committed on or after July 1, 2010.

Ga. L. 2010, p. 1158, § 1/SB 360, not codified by the General Assembly, pro-

vides that: “This Act shall be known and may be cited as the ‘Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving.’”

Ga. L. 2010, p. 1158, § 6/SB 360, not codified by the General Assembly, provides that the amendment by that Act shall apply to offenses committed on or after July 1, 2010.

Law reviews. — For article, “Motor Vehicles and Traffic,” see 27 Ga. St. U.L. Rev. 155 (2011).

JUDICIAL DECISIONS

Cited in *Smith v. State*, 324 Ga. App. 100, 749 S.E.2d 395 (2013).

40-6-241.1. Definitions; prohibition on certain persons operating motor vehicle while engaging in wireless communications; exceptions; penalties.

(a) As used in the Code section, the term:

(1) “Engage in a wireless communication” means talking, writing, sending, or reading a text-based communication, or listening on a wireless telecommunications device.

(2) “Wireless telecommunications device” means a cellular telephone, a text-messaging device, a personal digital assistant, a stand alone computer, or any other substantially similar wireless device that is used to initiate or receive a wireless communication with another person. It does not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication devices, subscription-based emergency communications, in-vehicle security, navigation, and remote diagnostics systems or amateur or ham radio devices.

(b) Except in a driver emergency and as provided in subsection (c) of this Code section, no person who has an instruction permit or a Class D license and is under 18 years of age shall operate a motor vehicle on any public road or highway of this state while engaging in a wireless communication using a wireless telecommunications device.

(c) The provisions of this Code section shall not apply to a person who has an instruction permit or a Class D license and is under 18 years of age who engages in a wireless communication using a wireless telecommunications device to do any of the following:

(1) Report a traffic accident, medical emergency, or serious road hazard;

(2) Report a situation in which the person believes his or her personal safety is in jeopardy;

(3) Report or avert the perpetration or potential perpetration of a criminal act against the driver or another person; or

(4) Engage in a wireless communication while the motor vehicle is lawfully parked.

(d)(1) Any conviction for a violation of the provisions of this Code section shall be punishable by a fine of \$150.00. The provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. The court imposing such fine shall forward a record of the disposition of the case of unlawfully operating a motor vehicle while using a wireless telecommunications device to the Department of Driver Services.

(2) If the operator of the moving motor vehicle is involved in an accident at the time of a violation of this Code section, then the fine shall be equal to double the amount of the fine imposed in paragraph (1) of this subsection. The law enforcement officer investigating the accident shall indicate on the written accident form whether such operator was engaging in a wireless communication at the time of the accident.

(e) Each violation of this Code section shall constitute a separate offense. (Code 1981, § 40-6-241.1, enacted by Ga. L. 2010, p. 1156, § 3/HB 23.)

Editor's notes. — Ga. L. 2010, p. 1156, § 4/HB 23, not codified by the General Assembly, provides that this Code section shall be applicable to offenses committed on or after July 1, 2010.

Administrative rules and regulations. — Penalties for Violations of Uniform Rules of the Road, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Rule 375-3-3-.01.

Law reviews. — For article, "Motor Vehicles and Traffic," see 27 Ga. St. U.L. Rev. 155 (2011).

40-6-241.2. Writing, sending, or reading text based communication while operating motor vehicle prohibited; exceptions; penalties for violation.

(a) As used in the Code section, the term "wireless telecommunications device" means a cellular telephone, a text messaging device, a personal digital assistant, a stand alone computer, or any other substantially similar wireless device that is used to initiate or receive a

wireless communication with another person. It does not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication devices, subscription based emergency communications, in-vehicle security, navigation devices, and remote diagnostics systems, or amateur or ham radio devices.

(b) No person who is 18 years of age or older or who has a Class C license shall operate a motor vehicle on any public road or highway of this state while using a wireless telecommunications device to write, send, or read any text based communication, including but not limited to a text message, instant message, e-mail, or Internet data.

(c) The provisions of this Code section shall not apply to:

(1) A person reporting a traffic accident, medical emergency, fire, serious road hazard, or a situation in which the person reasonably believes a person's health or safety is in immediate jeopardy;

(2) A person reporting the perpetration or potential perpetration of a crime;

(3) A public utility employee or contractor acting within the scope of his or her employment when responding to a public utility emergency;

(4) A law enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) A person engaging in wireless communication while in a motor vehicle which is lawfully parked.

(d) Any conviction for a violation of the provisions of this Code section shall be a misdemeanor punishable by a fine of \$150.00. The provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. The court imposing such fine shall forward a record of the disposition to the Department of Driver Services. Any violation of this Code section shall constitute a separate offense. (Code 1981, § 40-6-241.2, enacted by Ga. L. 2010, p. 1158, § 4/SB 360.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, Code Section 40-6-241.1, as enacted by Ga. L. 2010, p. 1158, § 4/SB 360, was redesignated as Code Section 40-6-241.2.

Editor's notes. — Ga. L. 2010, p. 1158, § 1/SB 360, not codified by the General

Assembly, provides that: "This Act shall be known and may be cited as the 'Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving.'"

Ga. L. 2010, p. 1158, § 6/SB 360, not codified by the General Assembly, provides that the enactment of this Code

section shall apply to offenses committed on or after July 1, 2010.

Administrative rules and regulations. — Penalties for Violations of Uniform Rules of the Road, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Rule 375-3-3-.01.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 40-6-241.2 does not appear to be an

offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

40-6-242. Obstruction of driver's view or interference with control of vehicle.

(a) No person shall drive a vehicle when it is so loaded or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position or commit any act as to interfere with the driver's view ahead or to the sides or to interfere with his control over the driving mechanism of the vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 96; Code 1933, § 68A-1104, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Cited in Reed v. Dixon, 153 Ga. App. 604, 266 S.E.2d 286 (1980); Pate v. Seaboard R.R., Inc., 819 F.2d 1074 (11th Cir.

1987); Worthy v. Kendall, 222 Ga. App. 324, 474 S.E.2d 627 (1996); State v. Bute, 250 Ga. App. 479, 552 S.E.2d 465 (2001).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 650 et seq.

ALR. — Negligence of automobile pas-

senger as to lookout or other precaution as affecting question of negligence or contributory negligence of driver, 165 ALR 596.

40-6-243. Opening and closing vehicle doors.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. (Ga. L. 1967, p. 542, § 5; Code 1933, § 68A-1105, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

- C.J.S.** — 60A C.J.S., Motor Vehicles, § 756. caused in collision with, or avoiding collision with, open door or parked automobile, 92 ALR2d 1037.
- ALR.** — Liability for injury or damage

40-6-244. Riding in house trailer.

No driver of a motor vehicle shall allow a person or persons to occupy a towed house trailer while it is being towed by a motor vehicle upon a public highway. (Code 1933, § 68A-1106, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1202, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-245. Driving through canyon or on mountain highway.

The driver of a vehicle traveling through a defile or canyon or on a mountain highway shall hold such vehicle under control and as near the right-hand edge of the highway as reasonably possible and, except when driving entirely to the right of the center of the roadway, shall give audible warning with the horn of such vehicle upon approaching any curve where the view is obstructed within a distance of 200 feet along the highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 97; Code 1933, § 68A-1107, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 3; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

- ALR.** — Duty in operating automobile at curve or on hill, 57 ALR 589. spect to giving audible signal where driver's view ahead is obstructed at curve or hill, 16 ALR3d 897.
- Automobiles: duty and liability with re-

40-6-246. Coasting.

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of a truck or bus when traveling upon a down grade shall not coast with the clutch disengaged. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 98; Code 1933, § 68A-1108, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

- ALR.** — Injury to one while coasting in street, 109 ALR 941.

40-6-247. Following fire apparatus or emergency vehicle.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm or any other emergency vehicle closer than 200 feet and shall not park such vehicle within 500 feet of any fire apparatus stopped in answer to a fire alarm. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 99; Code 1933, § 68A-1109, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 246.

C.J.S. — 60A C.J.S., Motor Vehicles, § 872, 879.

40-6-248. Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private road, or driveway to be used at any fire or alarm of fire, without consent of the fire department official in command. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 100; Code 1933, § 68A-1110, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-248.1. Securing loads on vehicles.

(a) As used in this Code section, the term "litter" has the meaning provided by paragraph (1) of Code Section 16-7-42.

(a.1) No vehicle shall be driven or moved on any public road unless such vehicle is constructed or loaded or covered so as to prevent any of its load from dropping, escaping, or shifting in such a manner as to:

(1) Create a safety hazard; or

(2) Deposit litter on public or private property while such vehicle is on a public road.

However, this Code section shall not prohibit the necessary spreading of any substance in public road maintenance or construction operations.

(b) No person shall operate or load for operation, on any public road, any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from:

(1) Becoming loose, detached, or in any manner becoming a hazard to other users of the public road; or

(2) Depositing litter on public or private property while such vehicle is on a public road.

(c) No motor carrier shall allow a commercial motor vehicle to be driven and no person shall operate a commercial motor vehicle with a load that is not secure. Loads shall be secured as required by state and federal law, rule, and regulation. As used in this subsection, the term “load” shall include loads consisting of liquids and gases as well as solid materials.

(d) Nothing in this Code section nor any regulations based thereon shall conflict with federal, Department of Public Safety, or Board of Public Safety regulations applying to the securing of loads on motor vehicles.

(e) The provisions of paragraph (2) of subsection (a) and paragraph (2) of subsection (b) of this Code section and regulations based thereon shall not apply to organic debris that escapes during the transportation of silage from field or farm to storage and storage to feedlot or during the transportation of agricultural or farm products or silvicultural products from farm or forest to a processing plant or point of sale or use. (Code 1933, § 95A-955, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1981, p. 705, § 1; Ga. L. 2002, p. 1270, § 1; Code 1981, § 32-6-21; Code 1981, § 40-6-248.1, as redesignated by Ga. L. 2006, p. 275, § 3-9/HB 1320; Ga. L. 2012, p. 580, § 10/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 18/HB 323.)

The 2012 amendment. effective July 1, 2012, substituted “Georgia Department of Public Safety” for “, Georgia Public Service Commission” near the middle of subsection (c).

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “Department of Public Safety, or Board of Public Safety” for “Georgia Department of Public Safety, or Georgia Board of Public Safety” in subsection (c) (now subsection (d)). The second 2013 amendment, effective July 1, 2013, substituted “such covering” for “said covering” in the introductory paragraph of subsection (b); added subsection (c); redesignated former subsections (c) and (d) as present subsections (d) and (e), respectively; and, in subsection (d), deleted “Georgia” preceding “Department” and preceding “Board”. See editor’s note for applicability.

Cross references. — Operating vehicle without adequately securing load, § 40-6-254. Prohibition against dragging or sliding of vehicles or loads on road surfaces, § 40-8-3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, a comma that was inadvertently deleted was inserted following “federal” in subsection (c) (now (d)).

Editor’s notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Comprehensive Litter Prevention and Abatement Act of 2006’.”

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

Ga. L. 2006, p. 275, § 3-9/HB 1320, effective July 1, 2006, redesignated former Code Section 32-6-21 as present Code Section 40-6-248.1.

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: “This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date”.

JUDICIAL DECISIONS

Driving with an unsecured load is a strict liability offense, and proof of mens rea or guilty knowledge is unnecessary to support a conviction. *Semones v. State*, 200 Ga. App. 3, 406 S.E.2d 483, cert. denied, 200 Ga. App. 897, 406 S.E.2d 483, cert. vacated, 261 Ga. 744, 414 S.E.2d 463 (1991).

Probable cause for stop. — Nothing showed error in the district court's denial of the defendants' motion to suppress since the district court found probable cause to stop and search the second defendant's truck for drug proceeds or, alternatively, probable cause under O.C.G.A.

§ 40-6-248.1 for carrying an unsecured load, and that after the stop, valid consent was given. *United States v. Baza*, No. 09-10285, 2010 U.S. App. LEXIS 12498 (11th Cir. June 17, 2010) (Unpublished).

What acts constitute loading process for insurance purposes. — Logger's act of throwing a metal cable across a load of logs on a truck to secure the logs prior to transportation on a public road constituted a part of the loading process for insurance purposes and was not an act separate therefrom. *Crosby v. Georgia Cas. & Sur. Co.*, 173 Ga. App. 644, 327 S.E.2d 505 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Traffic regulation. — This section qualifies as a statute relating to traffic upon the public roads, streets and highways, violation of which is punishable as a misdemeanor offense. 1979 Op. Att'y Gen. No. U79-14 (see O.C.G.A. § 32-6-21; now O.C.G.A. § 40-6-248.1).

Department of Transportation not

entitled to enforcement proceeds. — Department of Transportation is not entitled to any portion of resulting fine or forfeiture from enforcement of this section. 1973 Op. Att'y Gen. No. 73-149 (see O.C.G.A. § 32-6-21; now O.C.G.A. § 40-6-248.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 34, 86. 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 235 et seq.

C.J.S. — 40 C.J.S., Highways, §§ 273, 275 et seq.

40-6-249. Littering highway.

Any person littering a highway in violation of Part 2 of Article 2 of Chapter 7 of Title 16 or driving, moving, or loading for operation a vehicle in violation of Code Section 40-6-248.1 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Code Section 16-7-43. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 101; Code 1933, § 68A-1111, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2006, p. 275, § 3-13/HB 1320.)

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006'."

Ga. L. 2006, p. 275, § 5-1, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006 for purposes of adopting local ordinances to become effective on or after July 1, 2006.

40-6-250. Wearing device which impairs hearing or vision.

No person shall operate a motor vehicle while wearing a headset or headphone which would impair such person's ability to hear, nor shall any person while operating a motor vehicle wear any device which impairs such person's vision; provided, however, that a person may wear a headset or headphone for communication purposes. (Ga. L. 1974, p. 1137, § 1; Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 1601, § 1; Ga. L. 1989, p. 1399, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 759, § 1; Ga. L. 2010, p. 1158, § 5/SB 360.)

Editor's notes. — Ga. L. 2010, p. 1158, § 1/SB 360, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving.'"

Ga. L. 2010, p. 1158, § 6/SB 360, not

codified by the General Assembly, provides that the amendment by that Act shall apply to offenses committed on or after July 1, 2010.

Law reviews. — For article, "Motor Vehicles and Traffic," see 27 Ga. St. U.L. Rev. 155 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 40-6-250 does not appear to be an offense

for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

40-6-251. Driving in circular or zigzag course; "laying drags."

(a) No driver of any motor vehicle shall operate the vehicle upon the public streets, highways, public or private driveways, airport runways, or parking lots in such a manner as to create a danger to persons or property by intentionally and unnecessarily causing the vehicle to move in a zigzag or circular course or to gyrate or spin around, except to avoid a collision or injury or damage.

(b) The offenses described in this Code section shall be sufficiently identified on any traffic ticket, warrant, accusation, or indictment when referred to as "laying drags."

(c) This Code section shall not apply to drivers operating vehicles in or on any raceway, drag strip, or similar place customarily and lawfully used for such purposes.

(d) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1970, p. 549, §§ 1-4; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Suspension of driver's license for conviction for racing on highways or streets, § 40-5-54.

JUDICIAL DECISIONS

Even though defendant's behavior did not technically violate O.C.G.A. § 40-6-251, the fact that the defendant was driving in such a manner as to endanger others reasonably justified an investigative stop. *State v. Armstrong*, 223 Ga. App. 350, 477 S.E.2d 635 (1996).

Evidence insufficient to support conviction. — Since no evidence showed that the defendant was “laying drags,” that is, that the defendant caused the

defendant's vehicle to move in a zigzag or circular course, or to gyrate or spin around, the evidence was insufficient to support the defendant's conviction for “laying drags” and the trial court's judgment against the defendant for that offense had to be reversed. *Hale v. State*, 262 Ga. App. 710, 586 S.E.2d 372 (2003).

Cited in *Phillips v. State*, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 954 et seq., 1069. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, § 679. 61A C.J.S., Motor Vehicles, § 1642 et seq.

ALR. — What conduct in driving an automobile amounts to wantonness, willfulness, or the like, precluding defense of contributory negligence, 119 ALR 654.

Motor vehicle operator's criminal responsibility for homicide where he and deceased were racing, though accused's car was not otherwise involved in the collision or incident, 82 ALR2d 463.

Validity, construction, and application of criminal statutes specifically directed against racing of automobiles on public streets or highways (drag racing), 24 ALR3d 1286.

40-6-252. Parking, standing, or driving vehicle in private parking area after request not to do so.

(a) No person shall, after having been requested not to do so by a law enforcement officer or an authorized agent of the owner, park or stand an occupied or unoccupied motor vehicle in or repeatedly drive a motor vehicle through or within a parking area located on privately owned property and provided by a merchant, group of merchants, or shopping center or other facility for customers if:

(1) The parking area is identified by at least one sign as specified in this paragraph, and if the parking area contains more than 150 parking spaces then by at least one such sign at each entrance to the parking area, each such sign containing the following information in easy-to-read printing:

(A) Notice of this Code section;

(B) Identification of the property which is reserved for customers' use only;

(C) Identification of the merchant, group of merchants, or shopping center or other similar facility providing the parking area; and

(D) Warning that violators will be prosecuted; and

(2) The motor vehicle is parked, is standing, or is being operated other than for the purpose of:

(A) Transporting some person to or from the interior of the place of business of a merchant identified by the sign or signs in the parking area or to or from the interior of the shopping center or other facility so identified;

(B) Making use of a telephone, vending machine, automatic teller machine, or other similar facility located in the parking area;

(C) Meeting the requirements of a situation in which it has unexpectedly become impossible or impractical for the motor vehicle to continue to travel on the public roads; or

(D) Carrying out an activity for which express permission has been given by the owner of the parking area or an authorized representative of the owner.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine:

(1) Not to exceed \$50.00 for the first such offense;

(2) Not to exceed \$100.00 for the second such offense; and

(3) Not to exceed \$150.00 for the third or subsequent such offense.

(c) The governing authority of any municipal corporation by ordinance may adopt by reference the provisions of subsection (a) of this Code section without publishing or posting in full the provisions thereof. Any person violating any such ordinance shall be subject to a monetary fine:

(1) Not to exceed \$50.00 for the first such violation;

(2) Not to exceed \$100.00 for the second such violation; and

(3) Not to exceed \$150.00 for the third or subsequent such violation. (Code 1981, § 40-6-252, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2785, § 24; Ga. L. 1993, p. 91, § 40.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offense. — Offense of “cruising” in a merchant’s parking area is one which those charged with a viola-

tion are to be fingerprinted. 1987 Op. Att’y Gen. No. 87-21.

40-6-253. Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area.

(a) As used in this Code section, the term:

(1) "Alcoholic beverage" means:

(A) Beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(B) Wine of not less than one-half of 1 percent of alcohol by volume; or

(C) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

(2) "Open alcoholic beverage container" means any bottle, can, or other receptacle that:

(A) Contains any amount of alcoholic beverage; and

(B)(i) Is open or has a broken seal; or

(ii) The contents of which are partially removed.

A container that has been sealed or resealed pursuant to Code Section 3-5-4 or 3-6-4 shall not constitute an open alcoholic beverage container for purposes of this Code section.

(3) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position; provided, however, that such term does not include any locked glove compartment or, in a passenger car not equipped with a trunk, any area behind the rearmost upright seat or not normally occupied by the driver or passengers.

(b)(1) A person shall not:

(A) Consume any alcoholic beverage; or

(B) Possess any open alcoholic beverage container

in the passenger area of any motor vehicle which is on the roadway or shoulder of any public highway.

(2) The provisions of paragraph (1) of this subsection shall not apply to any passenger in the passenger area of a motor vehicle

designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or house trailer.

(3) Only a person who consumes an alcoholic beverage or possesses an open alcoholic beverage container in violation of this Code section shall be charged with such offense; provided, however, that an operator of a motor vehicle who is alone in the passenger area of such motor vehicle shall be deemed to be in possession of any open alcoholic beverage container in such passenger area.

(c) Any person who violates this Code section is subject to a fine not to exceed \$200.00. (Code 1981, § 40-6-253, enacted by Ga. L. 1991, p. 1587, § 2; Ga. L. 2001, p. 208, § 1-4; Ga. L. 2008, p. 834, § 2/SB 55; Ga. L. 2013, p. 617, § 2/HB 99.)

The 2013 amendment, effective July 1, 2013, in the ending undesignated paragraph of paragraph (a)(2), substituted “A container that has been sealed or” for “A bottle of wine that has been” at the beginning and inserted “3-5-4 or” in the middle.

Code Commission notes. — Both Ga. L. 1991, p. 1058 and Ga. L. 1991, p. 1587

enacted a new Code Section 40-6-253. Pursuant to Code Section 28-9-5, in 1991, the legislation enacted by Ga. L. 1991, p. 1058 was renumbered as Code Section 40-6-253.1.

Law reviews. — For note on 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992).

JUDICIAL DECISIONS

Punishment for violation of O.C.G.A. § 40-6-253 is governed by its own penalty provision, not by O.C.G.A. § 17-10-3, the general misdemeanor statute; thus, the trial court erred in sentencing the defendant convicted of a violation to 12 months probation. *Chastain v. State*, 231 Ga. App. 225, 498 S.E.2d 792 (1998).

Abuse of discretion. — In a civil action, the court did not abuse the court’s discretion in admitting evidence that the defendant was holding a glass of wine at the time of the accident. *Boyer v. Brown*, 240 Ga. App. 100, 522 S.E.2d 692 (1999).

Negligence per se. — In a civil action, the court did not err in instructing the jury that a violation of O.C.G.A. § 40-6-253 was negligence per se. *Boyer v. Brown*, 240 Ga. App. 100, 522 S.E.2d 692 (1999).

Sufficient evidence of venue. — Even though a chase involving the defendant might have ended in another county, because the offense of eluding the officers was complete at the moment the defendant refused to stop, despite the visual

and audible signals requiring such, the defendant’s act of continuing the chase into that second county did not destroy venue in the county where the chase began; moreover, after the defendant wrecked the vehicle involved in the chase in the second county, the evidence gathered at the scene was sufficient to support the inference that the open beer containers were in the vehicle when the defendant was observed driving the vehicle moments earlier in the county where the chase began. *Mack v. State*, 283 Ga. App. 172, 641 S.E.2d 194 (2007).

Motion to suppress evidence obtained from Selective Traffic Enforcement Program roadblock. — In defendant’s trial for driving under the influence under 18 U.S.C. §§ 7 and 13 and O.C.G.A. § 40-6-391 and an open container violation under O.C.G.A. § 40-6-253, a motion to suppress evidence obtained as a result of a Selective Traffic Enforcement Program roadblock was denied because the roadblock reasonably fit within the Fourth Amendment constraints. Implied

consent protections did not apply to field sobriety tests because the defendant was not under arrest at the time such tests were performed. *United States v. Howard*, No. CR208-09, 2008 U.S. Dist. LEXIS 72916 (S.D. Ga. Sept. 24, 2008).

Alcohol container outside of vehicle sufficient. — Fact that an open container of malt liquor was sitting in the snow directly outside the driver's door of the defendant's vehicle was sufficient to support the conviction for possessing an open container. *Simmons v. State*, 321 Ga. App. 743, 743 S.E.2d 434 (2013).

Evidence sufficient for conviction. — Defendant's admission against interest that the defendant was drinking while driving, coupled with proof that a glass smelling of alcohol was hidden under the passenger seat and the carpet was wet where the defendant had poured out the defendant alcoholic beverage, was sufficient for conviction under O.C.G.A. § 40-6-253. *Geoffrion v. State*, 224 Ga. App. 775, 482 S.E.2d 450 (1997).

When the totality of the circumstances, including the location of the car and the defendant's position in the car, indicated that the defendant was in actual physical control of the vehicle and in possession of an open container of an alcoholic beverage, even though the defendant was not seen driving the car, there was sufficient evidence that the police officers' act of questioning the defendant was more than a consensual inquiry and was within the scope of the officers' official duties so that a jury could reasonably determine that the defendant's use of a false name was a violation. *Wynn v. State*, 236 Ga. App. 98, 511 S.E.2d 201 (1999).

Although the defendant argued the state failed to prove that any open container in the car actually contained alcohol, the appellate court found the jury could have concluded from an officer's testimony that the "open bottle of beer" on the front seat was an open bottle containing beer pursuant to O.C.G.A. § 40-6-253(a)(2)(A). *Yates v. State*, 263 Ga. App. 29, 587 S.E.2d 180 (2003).

Evidence was sufficient to support the defendant's conviction for having an open container of alcoholic beverage in the vehicle because, even though the officer's

testimony established that the bottle in the defendant's car was empty, the defendant's statement to the officer that the defendant consumed the beer while driving was proof that the bottle contained an alcoholic beverage. *Kalb v. State*, 276 Ga. App. 394, 623 S.E.2d 230 (2005).

Convictions against the defendant for driving under the influence of alcohol to the extent that it was less safe for the defendant to drive and possession of an open container of alcohol, in violation of O.C.G.A. §§ 40-6-253(b)(1)(B) and 40-6-391(a)(1), were supported by sufficient evidence when police officers who had responded to a call observed the defendant driving into a parking lot with a damaged car, the defendant screamed and cried when asked what had happened and if the defendant was okay, there was a strong odor of alcohol, the defendant had bloodshot and watery eyes, admitted to having had "too many," and the defendant refused to take field sobriety tests or a chemical breath test; further, a search of the vehicle after the defendant's arrest revealed open bottles of wine cooler. *Crenshaw v. State*, 280 Ga. App. 568, 634 S.E.2d 520 (2006).

Defendant's argument that the evidence was insufficient to support the defendant's open container conviction pursuant to O.C.G.A. § 40-6-253 because there was no evidence presented during the trial that there was an open container in the passenger compartment of the defendant's truck was disingenuous; the defendant requested a bench trial and stipulated to evidence presented at the motion hearing, which included a witness's testimony that the witness saw an opened beer can in the passenger compartment of the defendant's truck. *Brogdon v. State*, 299 Ga. App. 547, 683 S.E.2d 99 (2009), *aff'd*, 287 Ga. 528, 697 S.E.2d 211 (2010).

By showing circumstantially that each defendant had equal access to a cooler in the backseat, the state was able to support the state's theory that all of the defendants were guilty of joint constructive possession of the open containers. *Davenport v. State*, 308 Ga. App. 140, 706 S.E.2d 757 (2011).

Arresting officer's testimony that police located two partially filled bottles of vodka

and one partially filled bottle of tequila in a defendant's vehicle, along with photographs of the bottles showing the bottles to be labeled vodka and tequila bottles, was sufficient to authorize the jury to find that the partially-filled bottles held alcohol. *Ayiteyfo v. State*, 308 Ga. App. 286, 707 S.E.2d 186 (2011).

Sufficient evidence supported the defendant's conviction for possession of an open alcoholic beverage container in the passenger area of a motor vehicle, while operating the vehicle, because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, and a clear plastic bottle containing 77 proof alcohol was found on the

floorboard. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Excessive sentence. — Sentence imposed on an open container conviction was vacated because O.C.G.A. § 40-6-253(c) provided that the maximum fine for violating the statute was not to have exceeded \$200, and the defendant was sentenced to serve 12 months on this count. *Brogdon v. State*, 299 Ga. App. 547, 683 S.E.2d 99 (2009), *aff'd*, 287 Ga. 528, 697 S.E.2d 211 (2010).

Cited in *Welch v. State*, 263 Ga. App. 70, 587 S.E.2d 220 (2003); *Hernandez v. State*, 297 Ga. App. 177, 676 S.E.2d 795 (2009); *Sommese v. State*, 299 Ga. App. 664, 683 S.E.2d 642 (2009); *Jones v. State*, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

Jurisdiction over possession of open container of alcohol in vehicle. — In counties in which there is a state court, both the state court and the magistrate court of the county possess concurrent jurisdiction over the prosecution of individuals charged with violating a county ordinance prohibiting the posses-

sion of open containers of alcohol while operating a motor vehicle. 1992 Op. Att'y Gen. No. U92-3.

Construction with other law. — Enforcement provisions of O.C.G.A. § 40-6-253 remain in effect including for bottles of wine resealed pursuant to O.C.G.A. § 3-6-4; the 2008 changes in the law were not intended to and did not authorize carrying open alcoholic beverage containers in the passenger area of vehicles. 2008 Op. Att'y Gen. No. 2008-7.

40-6-253.1. Transportation of etiologic agent; exception; penalty for violation.

(a) As used in this Code section, the terms “infectious substance” and “regulated medical waste” have the same meaning as given to those terms under the federal Hazardous Materials Regulations published in Title 49 of the Code of Federal Regulations as those regulations currently exist or may in the future be amended. The terms “etiologic agent” and “infectious substance” are synonymous.

(b) The transportation of infectious substances and regulated medical waste, including but not limited to the marking of packages and marking or placarding of vehicles with appropriate warnings, shall comply with the requirements of the federal Hazardous Material Regulations published in Title 49 of the Code of Federal Regulations as those regulations currently exist or may in the future be amended and with compatible regulations adopted or promulgated by the commissioner of public safety.

(c) Nurses, physicians, and other health care professionals may utilize all applicable exceptions contained in federal regulations and in the regulations of the Department of Public Safety when transporting infectious substances.

(d) Violation of the provisions of this Code section shall constitute a misdemeanor. (Code 1981, § 40-6-253.1, enacted by Ga. L. 1991, p. 1058, § 1; Ga. L. 1992, p. 982, § 1; Ga. L. 2003, p. 484, § 11; Ga. L. 2005, p. 334, § 18-7/HB 501.)

Code Commission notes. — Both Ga. L. 1991, p. 1058 and Ga. L. 1991, p. 1587 enacted a new Code Section 40-6-253. Pursuant to Code Section 28-9-5, in 1991, the legislation enacted by Ga. L. 1991, p. 1058 was renumbered as Code Section 40-6-253.1.

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

40-6-254. Operating vehicle without adequately securing load.

No person shall operate any motor vehicle with a load on or in such vehicle unless the load on or in such vehicle is adequately secured to prevent the dropping or shifting of such load onto the roadway in such a manner as to create a safety hazard. Any person who operates a vehicle in violation of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-6-254, enacted by Ga. L. 1992, p. 1967, § 2; Ga. L. 2002, p. 1270, § 2.)

Cross references. — Securing loads on vehicles, § 40-6-248.1.

JUDICIAL DECISIONS

Cited in *Westmoreland v. State*, 287 Ga. 688, 699 S.E.2d 13 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offense arising under O.C.G.A. § 40-6-254 does not require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

40-6-255. Driving away without paying for gasoline.

(a) No person shall drive a motor vehicle so as to cause it to leave the premises of an establishment at which gasoline offered for retail sale was dispensed into the fuel tank of such motor vehicle unless due

payment or authorized charge for the gasoline so dispensed has been made.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$100.00 or by confinement in the county or other jail, county correctional institution, or such other places as counties may provide for maintenance of county inmates for a term not to exceed 60 days, or both. (Code 1981, § 40-6-255, enacted by Ga. L. 1998, p. 1658, § 2.)

Cross references. — Suspension of driver's license for violation, § 40-5-57.2.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — An offense under O.C.G.A. § 40-6-255 would be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

ARTICLE 12

ACCIDENTS

Administrative rules and regulations. — Uniform traffic accident reports, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Regulation of Vehicles, Rule 375-6-2-.02.

RESEARCH REFERENCES

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 ALR 217; 46 ALR 1000.
Constitutionality, construction, and effect of statute in relation to conduct of driver of automobile after happening on an accident, 66 ALR 1228; 101 ALR 911.
Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 ALR 96; 93 ALR 551.
Duty toward travelers as regards condition of street or highway left as a result of an accident therein, 81 ALR 1004.
Liability of person, other than owner of animal or owner or operator of motor vehicle, for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 ALR4th 132.
Liability of owner or operator of vehicle for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 ALR4th 159.
Fact that passenger in vehicle is owner as affecting right to recover from driver for injuries to, or death of, passenger incurred in consequence of driver's negligence, 21 ALR4th 459.

40-6-270. Hit and run; duty of driver to stop at or return to scene of accident.

(a) The driver of any vehicle involved in an accident resulting in injury to or the death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at

the scene of the accident or shall stop as close thereto as possible and forthwith return to the scene of the accident and shall:

(1) Give his or her name and address and the registration number of the vehicle he or she is driving;

(2) Upon request and if it is available, exhibit his or her operator's license to the person struck or the driver or occupant of or person attending any vehicle collided with;

(3) Render to any person injured in such accident reasonable assistance, including the transporting, or the making of arrangements for the transporting, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such transporting is requested by the injured person; and

(4) Where a person injured in such accident is unconscious, appears deceased, or is otherwise unable to communicate, make every reasonable effort to ensure that emergency medical services and local law enforcement are contacted for the purpose of reporting the accident and making a request for assistance.

The driver shall in every event remain at the scene of the accident until fulfilling the requirements of this subsection. Every such stop shall be made without obstructing traffic more than is necessary.

(b) If such accident is the proximate cause of death or a serious injury, any person knowingly failing to stop and comply with the requirements of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(c)(1) If such accident is the proximate cause of an injury other than a serious injury or if such accident resulted in damage to a vehicle which is driven or attended by any person, any person knowingly failing to stop or comply with the requirements of this Code section shall be guilty of a misdemeanor and:

(A) Upon conviction shall be fined not less than \$300.00 nor more than \$1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both;

(B) Upon the second conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than \$600.00 nor more than \$1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both; and for purposes of this subparagraph, previous pleas of nolo contendere

accepted within such five-year period shall constitute convictions; and

(C) Upon the third or subsequent conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined \$1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both; and for purposes of this subparagraph, previous pleas of nolo contendere accepted within such five-year period shall constitute convictions.

(2) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction.

(3) If the payment of the fine required under this subsection will impose an economic hardship on the defendant, the judge, at his sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(d) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishments provided for in this Code section upon a conviction of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 40, 41; Ga. L. 1985, p. 758, § 16; Ga. L. 1987, p. 3, § 40; Ga. L. 1988, p. 1499, § 1; Ga. L. 1988, p. 1893, § 6; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1608, § 2.1; Ga. L. 2008, p. 1164, § 1/SB 529.)

Cross references. — Suspension of driver's license for conviction for failure to stop and render aid, § 40-5-54.

Editor's notes. — Ga. L. 1991, p. 1608, § 3.1, not codified by the General Assembly, provides that subsection (b) and paragraph (c)(1) are applicable to policies of motor vehicle insurance issued, issued for delivery, delivered, or renewed on and after October 1, 1991.

Ga. L. 2008, p. 1164, § 6/SB 529, not codified by the General Assembly, pro-

vides that the amendment to this Code section shall apply to all offenses committed on or after July 1, 2008.

Law reviews. — For annual survey on criminal law and procedure, see 44 Mercer L. Rev. 165 (1992).

For note discussing relief from civil liability in legislation concerning emergency aid to accident victims, see 25 Ga. B.J. 90 (1962). For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 99 (1992).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
PRACTICE AND PROCEDURE
APPLICATION

JURY INSTRUCTIONS

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 17781(54), former Code 1933, § 68-308, and former Code Section 40-6-271, which was renumbered as Code Section 40-6-270 by Ga. L. 1990, p. 2048, § 5, are included in the annotations for this Code section.

Constitutionality. — Georgia's hit-and run statute is not unconstitutional as the statute does not confront an individual with substantial hazards of self-incrimination through requiring certain disclosures as the statute is not directed at a highly selective group inherently suspect of criminal activities. *Bell v. State*, 293 Ga. 683, 748 S.E.2d 382 (2013).

"Accident" defined. — Word "accident" as used in the hit and run statute does not require that the act causing the injury be mere negligence or mishap, but is used broadly to include any incident where death or injury follows. *Gutierrez v. State*, 235 Ga. App. 878, 510 S.E.2d 570 (1998).

Application to driver "involved" in collision. — Duties of a driver to stop or to return to the scene of a vehicular collision do not apply only to the drivers of the vehicles which actually collide; the statutory duties apply to a driver who is "involved" in a collision. *Bellamy v. Edwards*, 181 Ga. App. 887, 354 S.E.2d 434 (1987).

Vehicles not being driven or attended. — Because the vehicle struck by the defendant was not being driven or attended by any person, reversal of the defendant's conviction under O.C.G.A. § 40-6-270 was required. *Melvin v. State*, 225 Ga. App. 169, 483 S.E.2d 146 (1997).

Stopping without obstructing traffic not negligence per se. — Violation of the provision relative to stopping without obstructing traffic is not negligence per se, as it is too indefinite for enforcement, but the provision does furnish a rule of civil conduct under the circumstances of each case, and the jury may find negligence in fact as a result of its violation. *Brock v. Avery Co.*, 99 Ga. App. 881, 110 S.E.2d 122 (1959).

Instruction for offenses under § 40-6-270. — After the defendant was charged with failing to maintain the defendant's lane in violation of O.C.G.A. § 40-6-48 and failing to use a turn signal in violation of O.C.G.A. § 40-6-123, the trial court properly instructed the jury as to the definition of the standard for strict liability offenses because the state was not required to prove mental fault or mens rea in those offenses; although O.C.G.A. § 40-6-10(b) required proof that the defendant knowingly operated the vehicle with no insurance, and O.C.G.A. § 40-6-270 required proof that the defendant knowingly failed to stop and comply with the statute's mandates, the trial court's charge on intent was found sufficient. *Augustin v. State*, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Instruction on knowledge. — Trial court distinguished between the counts charging the defendant with violating O.C.G.A. §§ 40-6-49(d) and 40-6-270 because the trial court fairly instructed the jurors that knowledge was an element of the hit-and-run count. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Evidence sufficient to deny directed verdict motion. — Trial court properly denied the defendant's motion for a directed verdict in a trial for leaving the scene of an accident as it was not necessary that the state show actual damage or injury; because the defendant knew that the defendant's tractor-trailer had hit the rear of a car, the defendant should have stopped to see if damage resulted. *Dalton v. State*, 286 Ga. App. 666, 650 S.E.2d 591 (2007).

Evidence sufficient for conviction. — Evidence was sufficient to convict defendant of leaving the scene of an accident since, while driving the defendant's truck, the defendant accidentally struck the victim, the defendant knew about that fact, the defendant did not dispute the victim's testimony that the defendant had stated to the victim that the defendant had not hit the victim that hard, and eyewitnesses testified that while the eyewitnesses

blocked the defendant's truck's egress while police were on route to the scene, the defendant fled on foot without providing defendant's name, address, license, or other identifying information. *McKay v. State*, 264 Ga. App. 726, 592 S.E.2d 135 (2003).

Motorist's identification of the defendant as the driver of a pick-up truck that hit the motorist's vehicle and then drove away was sufficient under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) to establish the defendant's identity for purposes of the defendant's conviction for leaving the scene of an accident and following too closely in violation of O.C.G.A. §§ 40-6-49 and 40-6-270(a)(1). *Craig v. State*, 276 Ga. App. 329, 623 S.E.2d 518 (2005).

Evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-270(a), 40-6-271(a), and 40-6-395(a) and (b)(5)(A) when the defendant refused to stop a vehicle for two bicycle-patrol uniformed officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle. *Fairwell v. State*, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Jury was authorized to find that the defendant "knowingly" failed to comply with O.C.G.A. § 40-6-270 because the victim testified that the defendant hit the victim's car, the car was damaged, the victim showed the defendant the damage to the car, and the defendant left without giving the information required. *Sevostiyanova v. State*, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Evidence adduced at trial was sufficient to authorize the jury to find the defendant guilty of violating O.C.G.A. § 40-6-270 beyond a reasonable doubt because the defendant rear-ended a car and left the scene without providing the victim with any identifying information.

Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Cited in *Pryor v. State*, 102 Ga. App. 744, 117 S.E.2d 880 (1960); *Glover v. State*, 123 Ga. App. 348, 181 S.E.2d 98 (1971); *Harrison v. Feather*, 178 Ga. App. 35, 342 S.E.2d 1 (1986); *Scott v. State*, 230 Ga. App. 522, 496 S.E.2d 494 (1998); *Wilson v. State*, 233 Ga. App. 327, 503 S.E.2d 924 (1998); *Couch v. State*, 246 Ga. App. 106, 539 S.E.2d 609 (2000); *Maxwell v. State*, 282 Ga. 22, 644 S.E.2d 822 (2007); *Stadnisky v. State*, 285 Ga. App. 33, 645 S.E.2d 545 (2007); *Leachman v. State*, 286 Ga. App. 708, 649 S.E.2d 886 (2007); *Green v. State*, 287 Ga. App. 248, 651 S.E.2d 174 (2007); *Merritt v. State*, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

Practice and Procedure

Sufficiency of indictment. — An essential element of the offense of leaving the scene of an accident, as set forth in O.C.G.A. § 40-6-270, is failing to return to the scene of an accident and remaining until fulfilling the requirements of former § 40-6-271 (see paragraphs (a)(1) to (a)(3) of § 40-6-270). Omission of such element renders void a count in an indictment charging the offense. *Thomason v. State*, 196 Ga. App. 447, 396 S.E.2d 79 (1990).

Indictment which alleged that the defendants acted "unlawfully" with reference to O.C.G.A. § 40-6-270, and that the defendants' actions resulted in death, sufficiently charged the intent to commit the criminal act, the knowledge necessary to form such intent, and adequately asserted proximate cause. *Tidwell v. State*, 216 Ga. App. 8, 453 S.E.2d 64 (1994).

Indictment against codefendants couched in the specific charge of a violation of O.C.G.A. § 40-6-270 was not fatally defective because the indictment failed to differentiate or name the actual driver. *Tidwell v. State*, 216 Ga. App. 8, 453 S.E.2d 64 (1994).

As lesser included offense of vehicular homicide. — Because the evidence presented by the state was insufficient to convict the defendant of first-degree vehicular homicide under O.C.G.A. § 40-6-393(a) predicated on a violation of

Practice and Procedure (Cont'd)

O.C.G.A. § 40-6-270(b), and specifically, the state failed to prove that the defendant's failure to remain at the scene of the accident contributed to the death of the victim, but instead the evidence showed that the victim died on impact, the defendant's vehicular homicide conviction was reversed and the case was remanded for resentencing on the lesser included offense of felony hit-and-run. *Henry v. State*, 284 Ga. App. 893, 645 S.E.2d 32 (2007).

Rule of lenity did not apply to hit-and-run and vehicular homicide. — Rule of lenity did not apply to the two felony charges of hit-and-run under O.C.G.A. § 40-6-270(b) and vehicular homicide under O.C.G.A. § 40-6-393(b) because it was essential to the rule that both crimes be proved with the same evidence. The element of causation of the accident was essential to prove first degree vehicular homicide, but was not necessary to prove felony hit-and-run. *Rouen v. State*, 312 Ga. App. 8, 717 S.E.2d 519 (2011).

Effect of civil litigation. — Defendant was entitled to a new trial when the victim's testimony and the defendant's testimony conflicted as to whether the victim acknowledged that the victim was unhurt after being struck by the defendant's vehicle and since the court disallowed any testimony regarding whether the victim was the plaintiff in a pending civil action against the defendant arising out of the same circumstances as the criminal prosecution. *Spitzberg v. State*, 233 Ga. App. 848, 506 S.E.2d 143 (1998).

Recovery petition subject to special demurrer. — Petition in this case by which the plaintiff sought to recover for injuries inflicted by an automobile when the plaintiff was walking on a public highway, and which alleged, as specific acts of negligence contributing to the injuries, the failure of the defendants to stop after the infliction of the injuries, and the defendant's failure to give the name and address of the operator and the name and address of the owner of the automobile as required by former Code 1910, § 1778, was subject to a special demurrer as to these and other allegations in regard to

the conduct of the defendant after the injuries had been inflicted. *Springer v. Adams*, 37 Ga. App. 344, 140 S.E. 390 (1927) (decided under former Code 1910, § 1778(54)).

Error in resentencing. — In remanding a felony hit-and-run case for resentencing, the court directed that the defendant be resentenced on only one of the two counts. Accordingly, the trial court was not authorized to resentence the defendant on both counts. *Henry v. State*, 291 Ga. App. 482, 662 S.E.2d 260 (2008).

Application

Relevance of evidence of leaving scene. — Although the defendant's conduct in leaving the scene bore no causal connection to the collision, the jury was authorized to consider it in connection with the defendant's other acts preceding the injury as tending to establish the defendant's conduct in causing the injury as being negligence, and defendant's subsequent conduct in this regard was relevant to the issue of punitive damages. *Bellamy v. Edwards*, 181 Ga. App. 887, 354 S.E.2d 434 (1987).

Testimony concerning the defendant's prior high-speed vehicular flight from a police officer in violation of O.C.G.A. § 40-6-395 was sufficiently similar to the defendant's alleged flight from the instant vehicular collision so as to be admissible on the issue of the defendant's identity and bent of mind. *Cabral v. State*, 199 Ga. App. 557, 405 S.E.2d 556 (1991).

Aggravated assault and hit-and-run are not mutually exclusive crimes. — Aggravated assault with a motor vehicle and hit-and-run with that same vehicle are not mutually exclusive crimes, since an aggravated assault includes a finding of intent which is not an element of hit-and-run. *Gutierrez v. State*, 235 Ga. App. 878, 510 S.E.2d 570 (1998).

State failed to prove death caused by failure to stop and render aid. — Habeas court erred in denying relief to a prisoner who was serving a term of imprisonment for first degree vehicular homicide with failure to stop and render aid as the predicate offense in violation of O.C.G.A. § 40-6-270(b) because the state did not prove beyond a reasonable doubt

that the victim's death was caused by the prisoner's failure to stop and render aid; the evidence at the prisoner's trial was uncontroverted that the victim would have died regardless of whether or not the prisoner remained at the scene. In the prisoner's direct appeal, the court of appeals ruled that the illegal act in first degree vehicular homicide predicated on failure to stop and render aid was causing the death or injury by the accident and then failing to stop and render assistance but five years later, a unanimous court of appeals issued a whole-court decision, concluding that the crime was causing the victim's death by driving in the way prohibited by the predicate driving offense and overruling the decision in the prisoner's direct appeal. *Klaub v. Battle*, 286 Ga. 156, 686 S.E.2d 117 (2009).

Evidence insufficient for conviction. — Defendant's conviction for the offense of hit and run could not stand as the evidence was insufficient to show that the vehicle which the defendant collided with sustained any damage, and also did not show that the defendant knew the defendant committed any damage as the defendant first got out of the defendant's car, looked for damages, and left only when the defendant did not see any damage. *Lawrence v. State*, 257 Ga. App. 592, 571 S.E.2d 812 (2002).

Since the state failed to show that the defendant had driven any vehicle during the relevant period or that a particular vehicle was involved in a hit-and-run incident, the evidence was not sufficient to support the defendant's convictions for hit-and-run and less safe DUI, in violation of O.C.G.A. §§ 40-6-270 and 40-6-391(a)(1); there was also no evidence that the defendant owned the car or was authorized to drive the car. *Reynolds v. State*, 306 Ga. App. 1, 700 S.E.2d 888 (2010).

Evidence sufficient for conviction. — Evidence that the defendant's truck pushed a compact car a distance of at least 64 feet and that the defendant was stopped heading away from the scene, one to one-and-a-half miles from the accident, supported the jury's determination that the defendant intended not to stop. *Burden v. State*, 187 Ga. App. 778, 371 S.E.2d

410, cert. denied, 187 Ga. App. 907, 371 S.E.2d 410 (1988).

Since the defendant stipulated that the defendant was driving the car that hit the victim, evidence of the defendant's driving the defendant's car toward the victim, speeding up after the victim screamed, and slowing the car down and applying the brake lights about two football fields away, showed that the defendant had knowledge of the accident and the requisite general intent. *Dworkin v. State*, 210 Ga. App. 461, 436 S.E.2d 665 (1993).

Evidence that the defendant left the scene after backing into the car behind the defendant's vehicle and injuring an officer was sufficient for conviction. *Priester v. State*, 249 Ga. App. 594, 549 S.E.2d 429 (2001).

Conviction for hit and run was supported by sufficient evidence that there was an extremely loud noise made by the impact as well as testimony concerning how the impact would be perceived inside the defendant's truck, that the defendant seemed to slow temporarily before proceeding, and by testimony concerning the appearance of the rig and the defendant's conduct when the defendant arrived at the defendant's destination. *Gibson v. State*, 280 Ga. App. 435, 634 S.E.2d 204 (2006).

Adjudications as to two counts of aggravated assault and two counts of failing to stop at or return to an accident scene were supported by sufficient evidence detailing the juvenile's act of striking two individuals with a car, and then leaving the scene of that accident; moreover, decisions as to the credibility of witnesses were in the province of the juvenile court, which apparently determined that the state disproved the juvenile's defense. In the *Interest of J.L.*, 281 Ga. App. 105, 635 S.E.2d 393 (2006).

Given sufficient evidence that the defendant left the scene of an accident without providing the mandatory identifying information to the other party involved in the accident, the defendant's hit-and-run conviction was upheld on appeal; the fact that the defendant presented a different version of the events was immaterial. *London v. State*, 289 Ga. App. 17, 656 S.E.2d 180 (2007).

Application (Cont'd)

Section measures conduct of vehicular homicide defendant. — Conduct of a defendant at the time of a vehicular homicide may well be measured, inferentially and circumstantially by the conduct which the provisions of former Code 1933, § 68-308 proposed to regulate. *Hunter v. State*, 65 Ga. App. 766, 16 S.E.2d 500 (1941) (decided under former Code 1933, § 68-308).

Factors for determining negligence of hit and run driver. — Conduct of a hit and run driver of an automobile in failing to stop and give the driver's name, etc., and render assistance to the person injured by the driver in the operation of the driver's automobile along a public highway may, in that it is in violation of a statute, be regarded as negligence as a matter of law, and although, when taken alone, such conduct may have no causal connection with the act which caused the injuries, it is a circumstance which may be considered, in connection with the driver's other acts preceding the injury, as tending to establish the driver's conduct in causing the injury as being negligence. *Battle v. Kilcrease*, 54 Ga. App. 808, 189 S.E. 573 (1936) (decided under former Code 1933, § 68-308).

No proof that deputy failed to render aid. — In a wrongful death action filed against a county sheriff's deputy and the county, the administrator's claim that the deputy failed to report an accident and failed to render aid, in violation of both O.C.G.A. §§ 40-6-270(a)(3) and 40-6-273, were rejected, and the deputy and the county were erroneously denied summary judgment as the evidence showed that: (1) the deputy radioed for officer assistance; (2) the two officers looked for a second vehicle that might have been involved in the accident, to no avail; and (3) based on these factors, no evidence existed that the deputy breached the duty imposed by § 40-6-273. *Purvis v. Steve*, 284 Ga. App. 116, 643 S.E.2d 380 (2007), cert. denied, 2007 Ga. LEXIS 517 (Ga. 2007).

Penalty is assessed only against the operator, without reference to the owner of the vehicle involved or the employer of the driver, as the case may be. *Georgia*

Power Co. v. Shipp, 195 Ga. 446, 24 S.E.2d 764 (1943) (decided under former Code 1933, § 68-308).

Restitution not available unless leaving the scene caused damages. — Under O.C.G.A. §§ 17-14-2(2) and 17-14-9, restitution was not available for defendant's conviction for leaving the scene of an accident in violation of O.C.G.A. § 40-6-270(a) because the damage to the other vehicle was solely attributable to the collision between the cars defendant's failure to stop after the collision neither caused nor contributed to the damage. *Zipperer v. State*, 299 Ga. App. 792, 683 S.E.2d 865 (2009).

Jury Instructions

Instruction required. — Trial court's instruction on former § 40-6-271 (see paragraphs (a)(1) to (a)(3) of O.C.G.A. § 40-6-270) was essential when a defendant was charged with violating O.C.G.A. § 40-6-270, one specific element of which involves fulfilling the requirements of former § 40-6-271. *Griffith v. State*, 172 Ga. App. 255, 322 S.E.2d 921 (1984).

General jury charge on negligence and proximate cause sufficient. — Since the jury was previously charged on theories of general negligence and proximate cause, it was not error not to charge that the failure to render aid must proximately cause the injury. *Atlanta Transit Sys. v. Smith*, 141 Ga. App. 87, 232 S.E.2d 580 (1977).

Instruction for offenses under § 40-6-270. — Trial court's instruction on former § 40-6-271 (see paragraphs (a)(1) to (a)(3) of O.C.G.A. § 40-6-270), relating to the duty to give information and render aid, was essential when a defendant was charged with violating O.C.G.A. § 40-6-270, one specific element of which involved fulfilling the requirements of former § 40-6-271. *Griffith v. State*, 172 Ga. App. 255, 322 S.E.2d 921 (1984).

Even though the trial court did not specifically instruct the jury on knowing failure as stated in O.C.G.A. § 40-6-270(b) and (c), giving the pattern charge on intent was sufficient to inform the jury that the defendants intended to evade the duty imposed by that section.

Tidwell v. State, 216 Ga. App. 8, 453 S.E.2d 64 (1994).

Trial court did not improperly charge the jury on the entirety of O.C.G.A. § 40-6-270, even though the defendant was only accused of violating § 40-6-270(a), as the evidence that the defendant fled the scene of the accident without providing a name and other information was sufficient to sustain the conviction without even implicating the remainder of the statute. *Craig v. State*, 276 Ga. App. 329, 623 S.E.2d 518 (2005).

Justification defense instruction was not warranted by the evidence.

— Because the defendant contested the state's claim of being impaired and challenged the results of the Intoxilyzer test, the defendant was not entitled to assert the defense of justification after being charged with leaving the scene of an accident and other related offenses; thus, an instruction on a justification defense was not warranted by the evidence. *London v. State*, 289 Ga. App. 17, 656 S.E.2d 180 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Duty to stop not extended to trains and crews. — Requirement to stop at the scene of a motor vehicle incident does not extend to railroad trains and their operating crews. 1970 Op. Att'y Gen. No. 70-32.

Effect of § 51-1-29. — Ga. L. 1962, p. 534, § 1 (see O.C.G.A. § 51-1-29) apparently relieves one not at fault but involved in an automobile accident from liability

because one is required under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 40 and 41 (see O.C.G.A. § 40-6-270) to render aid and provide transportation to a hospital, even though the person believes that the person is not competent to undertake such responsibility. 1967 Op. Att'y Gen. No. 67-333.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 324, 325 et seq.

Am. Jur. Proof of Facts. — Identification of Hit-And-Run Vehicle and Driver, 60 POF3d 91.

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, §§ 11692 et seq., 1695.

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 ALR 217; 46 ALR 1000.

Constitutionality, construction, and effect of statute in relation to conduct of driver of automobile after happening of an accident, 66 ALR 1228; 101 ALR 911.

Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 ALR 96; 93 ALR 551.

Duty toward travelers as regards condition of street or highway left as result of an accident therein, 81 ALR 1004.

Violation of statute requiring one involved in an accident to stop and render aid as affecting civil liability, 80 ALR2d 299.

Construction and application of "amnesty" provision whereby automobile driver leaving scene of accident may report to police within stated time without risk of use of his report against him, 36 ALR4th 907.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid, 82 ALR4th 232.

Necessity and sufficiency of showing, in criminal prosecution under "hit-and-run" statute, accused's knowledge of accident, injury, or damage, 26 ALR5th 1.

Uninsured motorist indorsement: construction and application of requirement that there be "physical contact" with unidentified or hit-and-run vehicle; "miss-and-run" cases, 77 ALR5th 319.

Uninsured motorist indorsement: general issues regarding requirement that there be "physical contact" with unidentified or hit-and-run vehicle, 78 ALR5th 341.

Uninsured motorist indorsement: construction and application of requirement

that there be "physical contact" with unidentified or hit-and-run vehicle; "hit-and-run" cases, 79 ALR5th 289.

40-6-271. Duty upon striking unattended vehicle.

(a) The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place on the vehicle struck a written notice giving the name and address of the driver and the owner of the vehicle doing the striking.

(b) Any person who fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 43; Ga. L. 1980, p. 1059, § 1; Code 1981, § 40-6-272; Code 1981, § 40-6-271, as redesignated by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Offense not subject to criminal prosecution. — Conduct proscribed is without express statutory punishment and is not an offense subject to criminal prosecution. *United States v. Walter*, 484 F. Supp. 183 (S.D. Ga. 1980) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, prior to amendment by Ga. L. 1980, p. 1059, § 1).

Probable cause to arrest. — In defendant's trial for hijacking a motor vehicle, the trial court did not err in finding that a gun and the keys to the vehicle were discovered during a search incident to a lawful arrest for hit and run in violation of O.C.G.A. § 40-6-271(a), and therefore properly denied the defendant's motion to suppress evidence. The officer had probable cause to arrest for hit and run based on an examination of the vehicle and a witness's identification of the defendant, by pointing to the defendant as the driver. *Souder v. State*, 301 Ga. App. 348, 687 S.E.2d 594 (2009), cert. denied, No. S10C0536, 2010 Ga. LEXIS 343 (Ga. 2010).

Evidence sufficient. — Conviction for striking an unattended vehicle was affirmed since the record showed that, even though the victim was in the parking lot,

the victim had walked away from the victim's vehicle when the defendant struck the bumper of the victim's vehicle; further, the defendant failed to provide the victim with the defendant's name and address following the incident. *Crutcher v. State*, 267 Ga. App. 410, 599 S.E.2d 353 (2004).

Evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-270(a), and 40-6-271(a), 40-6-395(a) and (b)(5)(A), when the defendant refused to stop a vehicle for two bicycle-patrol uniformed officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle. *Fairwell v. State*, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Evidence was amply sufficient for a rational finder of fact to find the defendant guilty beyond a reasonable doubt of violating O.C.G.A. § 40-6-271 because the defendant struck two separate unattended

vehicles in a parking lot, and both victims testified at trial that the victims saw the collisions occur and that the driver left the scene without speaking to either of the victims, leaving a note, or providing any contact information. *Sevostiyanova v.*

State, 313 Ga. App. 729, 722 S.E.2d 333 (2012), cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Cited in *Adams v. State*, 293 Ga. App. 377, 667 S.E.2d 186 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Requirement to stop not extended to trains and crews. — Requirement to stop at the scene of a motor vehicle inci-

dent does not extend to railroad trains and their operating crews. 1970 Op. Att’y Gen. No. 70-32.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 329, 330.

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, § 1695.

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 ALR 217; 46 ALR 1000.

Constitutionality, construction, and ef-

fect of statute in relation to conduct of driver of automobile after happening of an accident, 66 ALR 1228; 101 ALR 911.

Criminal responsibility of one other than driver at time of accident, under “hit and run” statute, 62 ALR2d 1130.

Sufficiency of compliance with requirement of criminal “hit and run” statute that motorist identify himself, 48 ALR3d 685.

40-6-272. Duty upon striking fixture.

The driver of any vehicle involved in an accident resulting only in damage to a fixture legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall, upon request and if available, exhibit his operator’s license. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 44; Code 1981, § 40-6-273; Code 1981, § 40-6-272, as redesignated by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Intent charge proper. — Since the defendant’s intent in leaving the scene of the accident was an element of an offense under O.C.G.A. § 40-6-272, the trial court’s charge concerning the legal inference that a person of sound mind and discretion intends the natural and proba-

ble consequences of their intentional acts was relevant and proper. *Wadsworth v. State*, 209 Ga. App. 333, 433 S.E.2d 419 (1993).

Cited in *In the Interest of J.D.T.*, 262 Ga. App. 860, 586 S.E.2d 748 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Requirement to stop not extended to trains and crews. — Requirement to stop at the scene of a motor vehicle inci-

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Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 324 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, § 1692 et seq.

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 ALR 217; 46 ALR 1000.

Constitutionality, construction, and effect of statute in relation to conduct of

driver of automobile after happening of an accident, 66 ALR 1228; 101 ALR 911.

Duty toward travelers as regards condition of street or highway left as result of an accident therein, 81 ALR 1004.

Criminal responsibility of one other than driver at time of accident, under "hit and run" statute, 62 ALR2d 1130.

Sufficiency of compliance with requirement of criminal "hit and run" statute that motorist identify himself, 48 ALR3d 685.

40-6-273. Duty to report accident resulting in injury, death, or property damage.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of \$500.00 or more shall immediately, by the quickest means of communication, give notice of such accident to the local police department if such accident occurs within a municipality. If such accident occurs outside a municipality, such notice shall be given to the office of the county sheriff or to the nearest office of the state patrol. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 45; Ga. L. 1978, p. 1494, § 1; Code 1981, § 40-6-274; Code 1981, § 40-6-273, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 363, § 1.)

Law reviews. — For annual survey of insurance law, see 58 Mercer L. Rev. 181 (2006).

JUDICIAL DECISIONS

Time to report accident. — As neither an individual injured in a car accident nor the car's owner provided notice of such accident to police until four or five days after the accident, the injured passenger was not entitled to recover under the driver's uninsured motorist policy. *Navarro v. Atlanta Cas. Co.*, 250 Ga. App. 550, 552 S.E.2d 508 (2001).

When other driver unknown. — To recover uninsured motorist insurance benefits in a "John Doe" action, an insured, or a person acting on the insured's behalf, must give immediate notice of the accident to the local police department under O.C.G.A. § 40-6-273. *Dawkins v.*

Doe, 263 Ga. App. 737, 589 S.E.2d 303 (2003).

Trial court properly granted summary judgment to an insurer because after a motorcyclist was injured in a collision with a pickup truck, whose driver left the scene, and did not report the incident to the police for 29 days; the motorcyclist violated O.C.G.A. § 40-6-273, which was a condition precedent to uninsured motorist coverage under O.C.G.A. § 33-7-11(c). *Pender v. Doe*, 276 Ga. App. 178, 622 S.E.2d 888 (2005).

Charge not required. — Trial court's refusal to give the defendant's oral request to charge the jury on the provisions

of O.C.G.A. § 40-6-273 was not error as the defendant was not charged with violating the duty to report accidents as set out in that section and the defendant failed to submit a written request to charge on that section. *Grady v. State*, 212 Ga. App. 118, 441 S.E.2d 253 (1994).

Severity of the injury. — Evidence that the defendant was driving some people home in a truck from a bar, that the decedent fell off the truck bed, that the decedent was lying unconscious on the pavement, that the defendant and other people in the truck put the decedent in the truck, that the defendant and the others did not take the decedent to a hospital when the decedent regained consciousness in the truck because the decedent did not want to go to a hospital, and that the defendant did not report the accident, was sufficient to support the defendant's conviction for failing to report the accident. *Steele v. State*, 275 Ga. App. 651, 621 S.E.2d 606 (2005).

Evidence insufficient to support conviction. — Evidence was insufficient to support a conviction of leaving the scene of the accident since there was no collision with another car, no one was injured, and the defendant claimed that

any damage was worth far less than \$500; the defendant intended to leave the car in a ditch for only a short time and return for the car later. *Harvey v. State*, 277 Ga. App. 435, 626 S.E.2d 623 (2006).

Factors for determining negligence of hit and run driver. — In a wrongful death action filed against a county sheriff's deputy and the county, the administrator's claim that the deputy failed to report an accident and failed to render aid, in violation of both O.C.G.A. §§ 40-6-270(a)(3) and 40-6-273, were rejected, and the deputy and the county were erroneously denied summary judgment as the evidence showed that: (1) the deputy radioed for officer assistance; (2) the two officers looked for a second vehicle that might have been involved in the accident, to no avail; and (3) based on these factors, no evidence existed that the deputy breached the duty imposed by § 40-6-273. *Purvis v. Steve*, 284 Ga. App. 116, 643 S.E.2d 380 (2007), cert. denied, 2007 Ga. LEXIS 517 (Ga. 2007).

Cited in *Collins v. Porterfield*, 102 Ga. App. 294, 116 S.E.2d 105 (1960); *Thomas v. State*, 133 Ga. App. 893, 212 S.E.2d 648 (1975); *Hall v. State*, 200 Ga. App. 585, 409 S.E.2d 221 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, T. 68 are included in the annotations for this Code section.

Accident on private property. — No specific statutory mandate requires a county sheriff to investigate an accident

occurring on private property. 1968 Op. Att'y Gen. No. 68-206 (decided under former Code 1933, T. 68).

Accidents on private property. — All accidents must be reported, even though the accident may occur on private property. 1972 Op. Att'y Gen. No. U72-34.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 183, 208.

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, § 1692 et seq.

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 ALR 217; 46 ALR 1000.

Constitutionality, construction, and effect of statute in relation to conduct of

driver of automobile after happening of an accident, 66 ALR 1228; 101 ALR 911.

Necessity and sufficiency of showing in a criminal prosecution under a "hit-and-run" statute accused's knowledge of accident, injury, or damage, 23 ALR3d 497; 26 ALR5th 1.

Sufficiency of compliance with requirement of criminal "hit and run" statute that motorist identify himself, 48 ALR3d 685.

Admissibility of police officer's testi-

mony at state trial relating to motorist's admissions made in or for automobile accident report required by law, 46 ALR4th 291.

Necessity and sufficiency of showing, in criminal prosecution under "hit-and-run" statute, accused's knowledge of accident, injury, or damage, 26 ALR5th 1.

40-6-273.1. Instruction to drivers to provide certain information to other parties.

The law enforcement officer at the scene of an accident required to be reported in accordance with the provisions of Code Section 40-6-273 shall instruct the driver of each motor vehicle involved in the accident to report the following to all other parties suffering injury or property damage as an apparent result of the accident:

- (1) The name and address of the owner and the driver of the motor vehicle;
- (2) The license number of the motor vehicle; and
- (3) The name of the liability insurance carrier for the motor vehicle or the fact that such driver has a certificate of self-insurance issued pursuant to Code Section 33-34-5.1. (Code 1981, § 40-6-273.1, enacted by Ga. L. 1994, p. 831, § 1; Ga. L. 2000, p. 1246, § 17.)

Law reviews. — For note on the 1994 enactment of this Code section, see 11 Ga. St. U.L. Rev. 223 (1994).

40-6-274. Exemption from duty to stop at scene or report accident.

Any other provision of this article or any other law to the contrary notwithstanding, the driver of any vehicle involved in a traffic accident in which there is no personal injury or in which no second party and no property of a second party is involved shall not have the duty to stop or immediately report such accident, and no such driver shall be prosecuted for his failure to stop or immediately to report such accident. This Code section shall not abrogate or affect a driver's duty to file any written report which may be required by the local law enforcement agency. (Ga. L. 1972, p. 819, § 1; Code 1981, § 40-6-275; Code 1981, § 40-6-274, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 97, § 40.)

JUDICIAL DECISIONS

Cited in *Lindsey v. Storey*, 936 F.2d 554 (11th Cir. 1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 183, 208, 378.

ALR. — Duty toward travelers as regards condition of street or highway left as result of an accident therein, 81 ALR 1004.

Constitutionality, construction, and effect of statutes in relation to conduct of driver of automobile after happening of accident, 101 ALR 911.

40-6-275. Duty to remove vehicle from public roads; removal of incapacitated vehicle from state highway.

(a) Any other provision of this article or any other law to the contrary notwithstanding, motor vehicles involved in traffic accidents and the drivers of such motor vehicles shall be subject to the provisions of this Code section.

(b) This Code section shall apply to motor vehicle traffic accidents which occur on the public roads of this state as defined in paragraph (24) of Code Section 32-1-3. Any violation of this Code section shall be punishable as a misdemeanor pursuant to Code Section 40-6-1.

(c) When a motor vehicle traffic accident occurs with no apparent serious personal injury or death, it shall be the duty of the drivers of the motor vehicles involved in such traffic accident, or any other occupant of any such motor vehicle who possesses a valid driver's license, to remove said vehicles from the immediate confines of the roadway into a safe refuge on the shoulder, emergency lane, or median or to a place otherwise removed from the roadway whenever such moving of a vehicle can be done safely and the vehicle is capable of being normally and safely driven, does not require towing, and can be operated under its own power in its customary manner without further damage or hazard to itself, to the traffic elements, or to the roadway. The driver of any such motor vehicle may request any person who possesses a valid driver's license to remove any such motor vehicle as provided in this Code section, and any such person so requested shall be authorized to comply with such request.

(d) The driver or any other person who has removed a motor vehicle from the main traveled way of the road as provided in subsection (c) of this Code section before the arrival of a police officer shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle pursuant to this Code section.

(e) This Code section shall not abrogate or affect a driver's duty to file any written report which may be required by a local law enforcement agency, but compliance with the requirements of this Code section shall not allow a driver to be prosecuted for his or her failure to stop and immediately report a traffic accident.

(f) This Code section shall not abrogate or affect a driver's duty to stop and give information in accordance with law, nor shall it relieve a police officer of his or her duty to render a report in accordance with law.

(g) Employees of the Department of Transportation, in the exercise of the management, control, and maintenance of the state highways, may require and assist in the removal from the main traveled way of roads on the state highway system of all vehicles incapacitated from any cause other than having been involved in a motor vehicle accident and of all vehicles incapacitated as a result of motor vehicle traffic accidents and of debris caused thereby when such motor vehicle accidents occur with no apparent serious personal injury or death, where such move can be accomplished safely by the drivers of the vehicles involved or with the assistance of a towing or recovery vehicle and will result in the improved safety or convenience of travel upon the road. However, a vehicle incapacitated as a result of a motor vehicle traffic accident with apparent serious personal injury or death may not be moved until the enforcement officer has made the necessary measurements and diagrams required for the initial accident investigation. (Ga. L. 1974, p. 969, § 1; Ga. L. 1977, p. 742, §§ 1, 2; Code 1981, § 40-6-276; Code 1981, § 40-6-275, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1993, p. 370, § 2; Ga. L. 1994, p. 97, § 40; Ga. L. 1999, p. 904, § 2; Ga. L. 2004, p. 896, § 1.)

Law reviews. — For annual survey article discussing developments in criminal law, see 51 Mercer L. Rev. 209 (1999).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-6-275 is unconstitutionally vague on the statute's face, in that the statute compels a driver who is involved in an accident and who believes in good faith that a vehicle has incurred "extensive" property

damage to leave the driver's vehicle in the roadway at the driver's peril, not knowing whether others will conclude that the damage was something less than "extensive." *State v. Johnson*, 270 Ga. 111, 507 S.E.2d 443 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 369.

ALR. — Duty toward travelers as regards condition of street or highway left as result of an accident therein, 81 ALR 1004.

Constitutionality, construction, and ef-

fect of statutes in relation to conduct of driver of automobile after happening of accident, 101 ALR 911.

Criminal responsibility for injury or death in operation of mechanically defective motor vehicle, 88 ALR2d 1165.

40-6-276. Duty of driver of wrecker truck.

(a) The driver of each wrecker truck towing away any vehicle from the scene of a wreck shall also take away all parts belonging to the vehicle which he is towing away, or, if they consist of small parts or broken glass, he shall clear the streets of said small parts or glass, unless the driver is ordered not to do so by the investigating police officer due to circumstances at the scene of the accident.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$100.00. (Ga. L. 1970, p. 445, §§ 1, 2; Ga. L. 1982, p. 3, § 40; Code 1981, § 40-6-277; Code 1981, § 40-6-276, as redesignated by Ga. L. 1990, p. 2048, § 5.)

Cross references. — Authority of removal and disposal of wrecked, or counties and municipalities with regard to junked motor vehicles, § 36-60-4.

40-6-277. Sheriffs and chief executive officers of law enforcement agencies to report deaths.

Every sheriff and chief executive officer of a law enforcement agency other than a sheriff shall, on or before the tenth day of each month, report in writing to the Department of Transportation the death of any person within their jurisdiction during the preceding calendar month as the result of a traffic accident known to them, giving the time and place of the accident and the circumstances relating thereto, in the manner specified by the commissioner of transportation. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 46; Code 1981, § 40-6-278; Code 1981, § 40-6-277, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-5; Ga. L. 2003, p. 484, § 12; Ga. L. 2005, p. 334, § 18-8/HB 501.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles,
§ 46. 61A C.J.S., Motor Vehicles, § 1692
et seq.

40-6-278. Uniform reports and reporting procedures.

The commissioner of transportation shall prescribe, by rule, uniform motor vehicle accident reports and reporting procedures which shall be used by all police officers, whether state, county, or municipal. The rules shall be adopted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The rules may require one type of report and reporting procedure for motor vehicle accidents in which property damage alone is involved and another type of report and reporting procedure for motor vehicle accidents involving personal

injury or death. The commissioner may, by rule, require additional investigation or reports in case of serious bodily injury or death. (Ga. L. 1973, p. 443, § 1; Code 1981, § 40-6-279; Code 1981, § 40-6-278, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-6; Ga. L. 2005, p. 334, § 18-9/HB 501.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 23.

dent reports and derivative information, 84 ALR4th 15.

ALR. — Discoverability of traffic acci-

40-6-279. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 5, redesignated former Code Section

40-6-279 as present Code Section 40-6-278.

ARTICLE 13

SPECIAL PROVISIONS FOR CERTAIN VEHICLES

Administrative rules and regulations. — Bicycle safety, Official Compilation of the Rules and Regulations of the

State of Georgia, Department of Public Safety, Chapter 570-10.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Motorist's Negligence in Child "Dart-Out" Case, 10 POF3d 1.

Motor Vehicle Accidents — Contributory Negligence by Bicyclist, 11 POF3d 503.

Negligence of Motorist in Accident Involving Bicyclist, 11 POF3d 395.

PART 1

BICYCLES AND PLAY VEHICLES

40-6-290. Application of part.

The provisions of this part applicable to bicycles shall apply whenever a bicycle is operated upon a highway, upon a bicycle lane, or upon any bicycle path set aside for the exclusive use of bicycles, subject to those exceptions stated in this part. (Code 1933, § 68A-1201, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 426, § 3/HB 101.)

Cross references. — Construction of bicycle trails and bikeways, §§ 12-3-114, 12-3-115.

40-6-291. Traffic laws applicable to bicycles; signaling of right hand turns.

(a) The provisions of this chapter that apply to vehicles, but not exclusively to motor vehicles, shall apply to bicycles, except as provided in this Code section and except that the penalties prescribed in subsection (b) of Code Section 40-6-390, subsection (c) of Code Section 40-6-391, and subsection (a) of Code Section 40-6-393 shall not apply to persons riding bicycles.

(b) Notwithstanding the provisions of Code Section 40-6-50, any person operating a bicycle may ride upon a paved shoulder; provided, however, that such person shall not be required to ride upon a paved shoulder.

(c) Any person operating a bicycle may signal a right turn with his or her right arm and hand extended horizontally or with his or her left hand and arm extended upward. (Ga. L. 1973, p. 471, § 3; Code 1933, § 68A-1202, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 4; Ga. L. 1988, p. 13, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 426, § 3/HB 101.)

JUDICIAL DECISIONS

Evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the defendant was driving the defendant's vehicle in a manner exhibiting a reckless disregard for the safety of others as the defendant was distraught, had consumed alcohol, and was driving

outside the defendant's lane of travel when the defendant struck from behind the victim on a bicycle, which had visible reflectors. *Lesh v. State*, 259 Ga. App. 325, 577 S.E.2d 4 (2003).

Cited in *Hunter v. Batton*, 160 Ga. App. 849, 288 S.E.2d 244 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 225. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 593.

ALR. — Injury to one while coasting in the street, 20 ALR 1433; 109 ALR 941.

Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 ALR 736.

Operation of bicycle as within drunk driving statute, 73 ALR4th 1139.

40-6-292. Manner of riding bicycle; carrying more than one person.

(a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto and shall allow no person to ride upon the handlebars.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(c) No person shall transport a child under the age of one year as a passenger on a bicycle on a highway, roadway, bicycle path, bicycle lane, or sidewalk; provided, however, that a child under the age of one year may be transported on a bicycle trailer or in an infant sling so long as such child is seated in the bicycle trailer or carried in an infant sling according to the bicycle trailer's or infant sling's manufacturer's instructions, and the bicycle trailer is properly affixed to the bicycle according to the bicycle trailer's manufacturer's instructions or the infant sling is properly worn by the rider of the bicycle according to the infant sling's manufacturer's instructions.

(d) No child between the ages of one year and four years shall ride as a passenger on a bicycle or bicycle trailer or be transported in an infant sling unless the child is securely seated in a child passenger bicycle seat, bicycle trailer, or infant sling according to the child passenger bicycle seat's, bicycle trailer's, or infant sling's manufacturer's instructions and the child passenger seat or bicycle trailer is properly affixed to the bicycle according to the child passenger bicycle seat's or bicycle trailer's manufacturer's instructions or the infant sling is worn according to the infant sling's manufacturer's instructions.

(e) Violation of subsections (c) and (d) of this Code section shall not constitute negligence per se nor contributory negligence per se or be considered evidence of negligence or liability.

(f) No person under the age of 16 years failing to comply with subsections (c) and (d) of this Code section shall be fined or imprisoned. (Ga. L. 1973, p. 471, § 8; Code 1933, § 68A-1203, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1993, p. 518, § 2; Ga. L. 2011, p. 426, § 3/HB 101.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 225, 226. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 592.

40-6-293. Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway. (Ga. L. 1973, p. 471, § 7; Code 1933, § 68A-1204, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 426, § 3/HB 101.)

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 593. while holding on to moving motor vehicle, 138 ALR 1127.
ALR. — Liability for injury to bicyclist Reciprocal duties of driver of automo-

bile and bicyclist or motorcyclist, 172 ALR 736.

40-6-294. Riding on roadways and bicycle paths.

(a) As used in this Code section, the term “hazards to safe cycling” includes, but shall not be limited to, surface debris, rough pavement, drain grates which are parallel to the side of the roadway, parked or stopped vehicles, potentially opening car doors, or any other objects which threaten the safety of a person operating a bicycle.

(b) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, except when:

- (1) Turning left;
- (2) Avoiding hazards to safe cycling;
- (3) The lane is too narrow to share safely with a motor vehicle;
- (4) Traveling at the same speed as traffic;

(5) Exercising due care when passing a standing vehicle or one proceeding in the same direction; or

(6) There is a right turn only lane and the person operating the bicycle is not turning right;

provided, however, that every person operating a bicycle away from the right side of the roadway shall exercise reasonable care and shall give due consideration to the other applicable rules of the road.

(c) Persons riding bicycles upon a roadway shall not ride more than two abreast except on bicycle paths, bicycle lanes, parts of roadways set aside for the exclusive use of bicycles, or when a special event permit issued by a local governing authority permits riding more than two abreast.

(d) Whenever a usable bicycle path has been provided adjacent to a roadway and designated for the exclusive use of bicycle riders, then the appropriate governing authority may require that bicycle riders use such bicycle path and not use those sections of the roadway so specified by such local governing authority. The governing authority may be petitioned to remove restrictions upon demonstration that the bicycle path has become inadequate due to capacity, maintenance, or other causes.

(e) Bicycle paths subject to the provisions of subsection (d) of this Code section shall at a minimum be required to meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials, and such bicycle paths

shall provide accessibility to destinations equivalent to the use of the roadway.

(f) Any person operating a bicycle in a bicycle lane shall ride in the same direction as traffic on the roadway.

(g) Electric assisted bicycles may be operated on bicycle paths. (Ga. L. 1973, p. 471, § 6; Code 1933, § 68A-1205, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 1546, §§ 1, 2; Ga. L. 1995, p. 271, § 1; Ga. L. 1996, p. 236, § 2; Ga. L. 2011, p. 426, § 3/HB 101.)

Cross references. — Construction of bicycle trails and bikeways, §§ 12-3-114, 12-3-115.

JUDICIAL DECISIONS

Cited in DeWaters v. City of Atlanta, 169 Ga. App. 41, 311 S.E.2d 232 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 247, 248, 252. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 595.

C.J.S. — 40 C.J.S., Highways, § 285.
ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 ALR 736.

40-6-295. Carrying articles.

No person operating a bicycle shall carry any package, bundle, or other article which prevents him or her from keeping at least one hand upon the handlebars. (Ga. L. 1973, p. 471, § 9; Code 1933, § 68A-1206, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 426, § 3/HB 101.)

40-6-296. Lights and other equipment on bicycles.

(a) Every bicycle when in use at nighttime shall be equipped with a light on the front which shall emit a white light visible from a distance of 300 feet to the front and with a light on the back which shall emit a red light visible from a distance of 300 feet to the rear. Any bicycle equipped with a red reflector on the rear that is approved by the Department of Public Safety shall not be required to have a light on the rear of the bicycle.

(b) Every bicycle sold or operated shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level pavement.

(c) No bicycle shall be equipped or operated while equipped with a set of handlebars so raised that the operator must elevate his or her hands above the operator's shoulders in order to grasp the normal steering grip area.

(d)(1) No person under the age of 16 years shall operate or be a passenger on a bicycle on a highway, bicycle path, bicycle lane, or sidewalk under the jurisdiction or control of this state or any local political subdivision thereof without wearing a bicycle helmet.

(2) For the purposes of this subsection, the term "bicycle helmet" means a piece of protective headgear which meets or exceeds the impact standards for bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation.

(3) For the purposes of this subsection, a person shall be deemed to wear a bicycle helmet only if a bicycle helmet of good fit is fastened securely upon such person's head with the straps of such bicycle helmet.

(4) No bicycle without an accompanying protective bicycle helmet shall be rented or leased to or for the use of any person under the age of 16 years unless that person is in possession of a bicycle helmet at the time of the rental or lease.

(5) Violation of any provision of this subsection shall not constitute negligence per se nor contributory negligence per se or be considered evidence of negligence or liability.

(6) No person under the age of 16 failing to comply with any provision of this subsection shall be fined or imprisoned. (Ga. L. 1973, p. 471, § 5; Code 1933, § 68A-1207, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1993, p. 518, § 3; Ga. L. 2000, p. 951, § 5A-7; Ga. L. 2005, p. 334, § 18-10/HB 501; Ga. L. 2011, p. 426, § 3/HB 101.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 198 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, § 621 et seq.

ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 ALR 736.

JUDICIAL DECISIONS

Cited in State v. Hammond, 313 Ga. App. 882, 723 S.E.2d 89 (2012).

40-6-297. Violation of part a misdemeanor; duty of parents and guardians.

(a) It shall be a misdemeanor for any person to do any act forbidden or fail to perform any act required in this part.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit such child or ward to violate any of the provisions of this part. (Code 1933, § 68A-1201, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-298; Ga. L. 1990, p. 2048, § 5; Code 1981, § 40-6-297, as redesignated by Ga. L. 2011, p. 426, § 3/HB 101.)

Editor's notes. — This Code section formerly pertained to reflectors on pedals of bicycles. The former Code section was based on Ga. L. 1972, p. 547, §§ 1, 2; Ga. L. 1973, p. 471, § 4; Code 1933,

§ 68A-1208, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5 and was repealed by Ga. L. 2011, p. 426, § 3/HB 101, effective July 1, 2011.

RESEARCH REFERENCES

ALR. — Injury to one while coasting in the street, 20 ALR 1433; 109 ALR 941.

40-6-298. Rules and regulations.

The Board of Public Safety is authorized to promulgate rules and regulations to carry this part into effect and is authorized to establish regulations for any additional safety equipment or standards it shall require for bicycles. (Ga. L. 1973, p. 471, § 12; Code 1933, § 68A-1209, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-299; Ga. L. 1990, p. 2048, § 5; Code 1981, § 40-6-298, as redesignated by Ga. L. 2011, p. 426, § 3/HB 101.)

Editor's notes. — Ga. L. 2011, p. 426, § 3/HB 101, effective July 1, 2011, red-

esignated former Code Section 40-6-299 as present Code Section 40-6-298.

40-6-299. Redesignated.

Editor's notes. — Ga. L. 2011, p. 426, § 3/HB 101, effective July 1, 2011, red-

esignated former Code Section 40-6-299 as present Code Section 40-6-298.

PART 2

MOTORCYCLES

Cross references. — Requirements as to liability insurance coverage for motorcycles, § 40-6-11.

Administrative rules and regulations. — Motorcyclists' Eye Protection,

Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-12.

Specifications for Protective Headgear for Vehicular Users, Official Compilation

of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-13.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent automobile or motorcycle drivers, 79 ALR 1277; 111 ALR 1019.
Operation of Motorcycle, 47 POF2d 127.
ALR. — “Emergency rule” as applied to

40-6-310. Traffic laws applicable to persons operating motorcycles.

Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to those provisions of this chapter which by their nature can have no application. (Code 1933, § 68A-1301, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 ALR 736.

40-6-311. Manner of riding motorcycle generally.

(a) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto; and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(b) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on either side of the motorcycle.

(c) No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him from keeping both hands on the handlebars.

(d) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

(e) No person shall operate or ride upon a motorcycle unless he shall wear some type of footwear in addition to or other than socks. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 95; Ga. L. 1962, p. 716, § 1; Ga. L. 1969,

p. 732, § 1; Ga. L. 1972, p. 475, § 1; Code 1933, § 68A-1302, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 225, 226. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 596 et seq.

ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 ALR 736.

40-6-312. Operating motorcycle on roadway laned for traffic.

(a) All motorcycles are entitled to full use of a lane, and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(b) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Motorcycles shall not be operated more than two abreast in a single lane.

(e) A person operating a motorcycle shall at all times keep his headlights and taillights illuminated.

(f) Subsections (b) and (c) of this Code section shall not apply to police officers in the performance of their official duties. (Code 1933, § 68A-1303, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Evidence sufficient to find violation of subsection (a). — Trial court properly denied a motion for judgment notwithstanding the verdict since the movant, driving a van, had attempted to overtake and pass a motorcycle without changing lanes, resulting in a collision. The evidence was such that the jury could have reasonably found that the movant violated both O.C.G.A. §§ 40-6-42(1) and 40-6-312. *Neiswonger v. Janics*, 196 Ga. App. 607, 396 S.E.2d 553 (1990).

Charging section because of skid mark. — Even though evidence indicated that a motorcycle skid mark was found

near the location on the highway where the collision between the motorcycle and truck occurred and the skid mark ran from the center line to the side of the road which would serve as evidence that at the time the brakes were applied on the motorcycle it was on the center line if not in the same lane with the vehicle being passed, the trial court erred in charging the jury with respect to O.C.G.A. § 40-6-312 since there was no evidence associating the skid mark and the motorcycle involved in the collision. *Exum v. Long*, 157 Ga. App. 592, 278 S.E.2d 13 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobile and bicyclist or motorcyclist, automobiles and Highway Traffic, §§ 204, 252. 172 ALR 736.

ALR. — Reciprocal duties of driver of

40-6-313. Clinging to other vehicles.

No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a roadway. (Code 1933, § 68A-1304, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-314. Footrests and handlebars.

(a) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(b) No person shall operate any motorcycle with handlebars more than 15 inches in height above that portion of the seat occupied by the operator or with a backrest more commonly known as aissy bar that is designed in such a way as to create a sharp point at its apex. (Ga. L. 1969, p. 732, § 2; Ga. L. 1972, p. 475, § 2; Code 1933, § 68A-1305, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-315. Headgear and eye-protective devices for riders.

(a) No person shall operate or ride upon a motorcycle unless he or she is wearing protective headgear which complies with standards established by the commissioner of public safety.

(b) No person shall operate or ride upon a motorcycle if the motorcycle is not equipped with a windshield unless he or she is wearing an eye-protective device of a type approved by the commissioner of public safety.

(c) This Code section shall not apply to persons riding within an enclosed cab or motorized cart. This Code section shall not apply to a person operating a three-wheeled motorcycle used only for agricultural purposes.

(d) The commissioner of public safety is authorized to approve or disapprove protective headgear and eye-protective devices required in this Code section and to issue and enforce regulations establishing standards and specifications for the approval thereof. The commissioner shall publish in print or electronically lists of all protective headgear and eye-protective devices by name and type which have been approved. (Ga. L. 1969, p. 732, § 3; Code 1933, § 68A-1306, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1984, p. 1329, § 2; Ga. L. 1990, p. 2048,

§ 5; Ga. L. 2000, p. 951, § 5A-8; Ga. L. 2005, p. 334, § 18-11/HB 501; Ga. L. 2010, p. 838, § 10/SB 388.)

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-6-315 is a valid exercise of police power. *Ritter v. State*, 258 Ga. 551, 372 S.E.2d 230 (1988).

There is no First Amendment right to ride a motorcycle wearing a baseball cap, a bandanna, or bareheaded. *ABATE of Ga., Inc. v. Ga.*, 137 F. Supp. 2d 1349 (N.D. Ga. 2001), *aff'd*, 264 F.3d 1315 (11th Cir. 2001).

O.C.G.A. § 40-6-315 does not violate due process on grounds that a motorcyclist cannot determine whether the motorcyclist is meeting the headgear requirements of the statute. *ABATE of Ga., Inc. v. Ga.*, 137 F. Supp. 2d 1349 (N.D. Ga. 2001), *aff'd*, 264 F.3d 1315 (11th Cir. 2001).

O.C.G.A. § 40-6-315 does not violate the equal protection rights of motorcycle riders under the Fourteenth Amendment. *ABATE of Ga., Inc. v. Ga.*, 137 F. Supp. 2d 1349 (N.D. Ga. 2001), *aff'd*, 264 F.3d 1315 (11th Cir. 2001).

Motorcycle helmet law, O.C.G.A. § 40-6-315, does not require that the Georgia Board of Public Safety issue a list approving specific types of headgear and,

therefore, the failure of the board to publish a list of approved headgear and eye-protective devices did not violate the plaintiff's rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution. *ABATE of Ga., Inc. v. Georgia*, 264 F.3d 1315 (11th Cir. 2001), *cert. denied*, 536 U.S. 924, 122 S. Ct. 2592, 153 L. Ed. 2d 781 (2002).

Motorcycle helmet law, O.C.G.A. § 40-6-315, is not unconstitutionally vague. *ABATE of Ga., Inc. v. Georgia*, 264 F.3d 1315 (11th Cir. 2001), *cert. denied*, 536 U.S. 924, 122 S. Ct. 2592, 153 L. Ed. 2d 781 (2002).

Headgear. — O.C.G.A. § 40-6-313 does not require the Board of Public Safety to approve specific types of headgear; the statute does require the establishment of compliance standards through regulations. *Dowis v. State*, 243 Ga. App. 354, 533 S.E.2d 34 (2000).

Although it may be debatable whether particular types of headgear comply with standards established by the Board of Public Safety, it is absolutely clear that a cloth bandana does not. *Dowis v. State*, 243 Ga. App. 354, 533 S.E.2d 34 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, § 250. 8 Am. Jur. 2d, *Automobiles and Highway Traffic*, § 599.

ALR. — *Motorcyclist's failure to wear helmet or other protective equipment as*

affecting recovery for personal injury or death, 85 ALR4th 365.

Validity of traffic regulations requiring motorcyclists to wear helmets or other protective gear, 72 ALR5th 607.

40-6-316. Rules and regulations.

The commissioner of public safety is authorized to promulgate rules and regulations to carry this part into effect and to establish regulations for safety standards for the operation of motorcycles. (Code 1933, § 68A-1306, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-8; Ga. L. 2005, p. 334, § 18-12/HB 501.)

PART 2A**PERSONAL ASSISTIVE MOBILITY DEVICES**

Law reviews. — For note on the 2003 40-6-327, see 20 Ga. St. U.L. Rev. 198 enactment of O.C.G.A. §§ 40-6-320 to (2003).

40-6-320. Operation on highways and sidewalks; direction of travel.

(a) Electric personal assistive mobility devices may be operated on highways and on sidewalks where a 48 inch clear path is maintained for access for persons with disabilities, provided that any person operating such a device shall have the same rights and duties as prescribed for pedestrians in Article 5 of this chapter and except as otherwise provided in this part.

(b) No person shall operate any electric personal assistive mobility device on the roadway of any highway unless:

(1) The maximum speed limit of the roadway is 35 miles per hour or less; or

(2) The roadway has a separately striped bicycle lane and the device is operated within the bicycle lane.

(c) When traveling on any roadway of a highway, a person operating an electric personal assistive mobility device shall travel in the same direction authorized for motor vehicle traffic on such roadway. (Code 1981, § 40-6-320, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-321. Due care to pedestrians.

Any person operating an electric personal assistive mobility device on a sidewalk or roadway shall comply with the requirements of this part or any local ordinance regulating the use of such devices pursuant to Code Section 40-6-371 and shall exercise due care to avoid colliding with, and shall yield the right of way to, persons traveling on foot. (Code 1981, § 40-6-321, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-322. Speed of travel restricted.

No person shall operate an electric personal assistive mobility device at a speed greater than seven miles per hour when traveling on any sidewalk or 15 miles per hour elsewhere; provided, however, that a county or municipal governing authority or the commissioner of transportation may further restrict the speed of such devices in locations where pedestrian traffic is congested and there is a significant speed differential between pedestrians and operators of such devices. (Code 1981, § 40-6-322, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-323. Parking.

(a) An electric personal assistive mobility device may be parked on a sidewalk unless otherwise prohibited or restricted by an official traffic control device or local ordinance; provided, however, that in no case shall an electric personal assistive mobility device be parked on any sidewalk in such a manner as to prevent the movement of a wheelchair.

(b) An electric personal assistive mobility device shall not be parked on any roadway in such a manner as to prevent the movement of a legally parked motor vehicle.

(c) Except as otherwise provided in this Code section, any person operating an electric personal assistive mobility device shall be subject to the same parking restrictions as provided for motor vehicles under Part 1 of Article 10 of this chapter. All violations of parking restrictions shall be deemed the responsibility of the owner of such device; and, for purposes of parking restrictions, the owner shall be deemed to be in control of the device at the time of a parking violation involving such device, and no evidence of actual control by such owner need be proven as an element of the offense. (Code 1981, § 40-6-323, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-324. Transportation of hazardous materials; medical oxygen excluded.

No person shall carry or transport any hazardous materials on an electric personal assistive mobility device. Oxygen carried for personal medical reasons shall not be deemed a hazardous material for purposes of this Code section. (Code 1981, § 40-6-324, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-325. Required equipment; minimum age for operation; exception to age requirement.

(a) Any electric personal assistive mobility device, when operated on any highway or sidewalk, shall be equipped with front, rear, and side reflectors which shall be visible from a distance of 300 feet when directly in front of lawful upper beams of headlights on a motor vehicle; a system that when employed will enable the operator to bring the device to a controlled stop; and, if the device is operated between one-half hour after sunset and one-half hour before sunrise, a lamp emitting a white light which, while the device is in motion, illuminates the area in front of the operator for a distance of 300 feet.

(b) No person under the age of 16 years shall operate an electric assistive personal mobility device on any highway; provided, however,

that a person under the age of 16 years may operate an electric assistive personal mobility device on any sidewalk if such person is wearing protective headgear which meets or exceeds the impact standards for bicycle helmets required by Code Section 40-6-296. (Code 1981, § 40-6-325, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-326. Operation while intoxicated.

Any person who is under the influence of any intoxicating liquor or any drug to a degree which renders him or her a hazard shall not operate any electric personal assistive mobility device on any highway or sidewalk. Violation of this Code section shall be a misdemeanor, punishable upon conviction by a fine not to exceed \$500.00. (Code 1981, § 40-6-326, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-327. Penalty for violations.

Any person who violates any provision of this part other than Code Section 40-6-326 shall not be guilty of a criminal offense or a moving traffic violation for purposes of Code Section 40-5-57 but shall be subject to a civil penalty not to exceed \$500.00. (Code 1981, § 40-6-327, enacted by Ga. L. 2003, p. 308, § 4.)

PART 3

PERSONAL TRANSPORTATION VEHICLES

40-6-330. Standards for operating personal transportation vehicles.

Any local authority desiring to establish operating standards for personal transportation vehicles shall comply with Part 6 of this article. (Code 1981, § 40-6-330, enacted by Ga. L. 2014, p. 745, § 10/HB 877.)

Effective date. — This Code section § 10/HB 877, effective July 1, 2014, redesignated former Code Section 40-6-330 as

Editor's notes. — Ga. L. 2014, p. 745, present Code Section 40-6-330.1.

40-6-330.1. Required equipment for personal transportation vehicles; grandfather clause.

(a) All personal transportation vehicles shall be equipped with:

(1) A braking system sufficient for the weight and passenger capacity of the vehicle, including a parking brake;

(2) A reverse warning device functional at all times when the directional control is in the reverse position;

(3) A main power switch. When the switch is in the “off” position, or the key or other device that activates the switch is removed, the motive power circuit shall be inoperative. If the switch uses a key, it shall be removable only in the “off” position;

(4) Head lamps;

(5) Reflex reflectors;

(6) Tail lamps;

(7) A horn;

(8) A rearview mirror;

(9) Safety warning labels; and

(10) Hip restraints and hand holds or a combination thereof.

(b) The requirements of subsection (a) of this Code section shall not apply to any personal transportation vehicles operated during daylight hours authorized by local ordinances enacted prior to January 1, 2012. (Ga. L. 1973, p. 598, § 2; Code 1933, § 68A-1401, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-330; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-9; Ga. L. 2002, p. 506, § 5; Ga. L. 2002, p. 512, § 10; Ga. L. 2005, p. 334, § 18-13/HB 501; Code 1981, § 40-6-330.1, as redesignated by Ga. L. 2014, p. 745, § 10/HB 877.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 40-6-330 as present Code Section 40-6-330.1; and substituted the present provisions of this Code section for the former provisions which read: “Motorized carts may be operated on streets only

during daylight hours unless they comply with the equipment regulations promulgated by the commissioner of public safety.”

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 281 (2002).

JUDICIAL DECISIONS

Improper use of go-cart. — Motorized go-cart when not properly driven may be equally as dangerous as a motor vehicle when improperly used. *Hill v. Morrison*, 160 Ga. App. 151, 286 S.E.2d 467 (1981).

Application to golf cart. — Since a golf cart was a “motorized vehicle” under O.C.G.A. § 40-1-1(33) and (75), the defen-

dant had to have a driver’s license when driving the golf cart on a highway; the motorized cart statutes, O.C.G.A. §§ 40-6-330 and 40-6-331(b), (c) authorized licensing of the vehicle, not the driver. *Coker v. State*, 261 Ga. App. 646, 583 S.E.2d 498 (2003).

40-6-331. Designation of certain streets or PTV paths for PTV operation; licensing requirements for PTV operation; establishment of operating standards for PTVs; local authority immunity; erection of signage; crossing streets under jurisdiction of Department of Transportation.

(a) A local authority may, by ordinance, designate certain public streets or portions thereof or PTV paths that are under its regulation and control for the combined use of PTVs and regular vehicular traffic or the use of PTVs and no other types of motor vehicles and establish the conditions under which PTVs may be operated upon such streets or portions thereof or PTV paths, including without limitation the conditions under which a person may operate PTVs on such designated streets or portions thereof or PTV paths. All operators of PTVs shall be required to possess a valid driver's license except when operating a PTV within a locality whose local authority has enacted an ordinance permitting the use of PTVs or motorized carts on streets without possession of a driver's license prior to January 1, 2012.

(b) Local authority ordinances may establish operating standards but shall not require PTVs to meet any requirements of general law as to registration, inspection, certificate of title, or licensing; provided, however, that a local authority may, by ordinance, require the local registration and licensing of PTVs operated within its boundaries at least once every five years for a fee not to exceed \$15.00. No local authority shall be liable for losses that result from exercising or not exercising inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection of a PTV. The provisions of this subsection and the authority granted by this subsection shall not apply to PTVs owned by golf courses, country clubs, or other such organized entities which own such PTVs and make them available to or for use by members or the public on a rental or licensed basis, provided that such PTVs are used only on the premises of such golf courses, country clubs, or other such organized entities.

(c) Each local authority permitting the use of PTVs upon the public streets within its jurisdiction shall erect signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the corporate limits of the municipality or boundaries of the county. Such signs shall be at least 24 by 30 inches in area and shall warn approaching motorists that PTVs are authorized for use on public streets. All costs associated with such signs shall be funded entirely by the local authority. Ordinances establishing operating standards for PTVs shall not be effective unless appropriate signs giving notice are posted as required by this subsection.

(d)(1) In jurisdictions where PTVs are permitted or otherwise allowed by state law, PTVs may cross streets and highways that are

part of the state highway system only at crossings or intersections designated for that purpose and which are constructed as an active grade crossing in accordance with the Manual on Uniform Traffic Control Devices. PTV crossings shall be indicated by warning sign W11-11 of the Standard Highway Signs and be clearly visible in both directions by vehicles traversing the highway which is being crossed or intersected by PTVs.

(2) PTVs may cross streets and highways that are part of a municipal street system or county road system and used by other types of motor vehicles only at crossings or intersections designated for that purpose by the local authority having jurisdiction over such system. (Ga. L. 1973, p. 598, § 2; Code 1933, § 68A-1402, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 1241, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 2002, p. 506, § 6; Ga. L. 2002, p. 512, § 11; Ga. L. 2004, p. 67, § 3; Ga. L. 2013, p. 872, § 1/HB 384; Ga. L. 2014, p. 745, § 10/HB 877.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of subsection (c) for the former provisions, which read: "Ordinances establishing operating standards shall not be effective unless appropriate signs giving notice are posted along the public streets affected."

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

Code Commission notes. — The amendment of this Code section by Ga. L. 2002, p. 506, § 6, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 512, § 11. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 281 (2002).

JUDICIAL DECISIONS

Application to golf cart. — Since a golf cart was a "motorized vehicle" under O.C.G.A. § 40-1-1(33) and (75), the defendant had to have a driver's license when driving the golf cart on a highway; the

motorized cart statutes, O.C.G.A. §§ 40-6-330 and 40-6-331 authorized licensing of the vehicle, not the driver. *Coker v. State*, 261 Ga. App. 646, 583 S.E.2d 498 (2003).

PART 4

MOPEDS

40-6-350. Traffic laws applicable to persons operating mopeds.

Every person operating a moped shall be granted all the rights and shall be subject to all the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to those provisions of this chapter which by their nature can have no application. However, the operator of a moped shall not be required to comply with subsection (e) of Code Section 40-6-312, relating to headlights and taillights, or subsection (b) of Code Section

40-6-315, relating to windshields and eye-protective devices. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5.)

40-6-351. Driver's license or permit required for certain operators.

No person under 15 years of age shall operate a moped or an electric assisted bicycle upon the public roads and highways of this state. No person shall operate a moped upon the public roads and highways of this state unless he or she shall have in his or her possession a valid driver's license, instruction permit, or limited permit issued to him or her pursuant to Chapter 5 of this title; provided, however, that all classes of licenses, instruction permits, or limited permits issued pursuant to Chapter 5 of this title shall be valid for the purposes of operating mopeds upon the public roads and highways of this state. No license or permit shall be required for the operation of an electric assisted bicycle. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 236, § 3; Ga. L. 2007, p. 47, § 40/SB 103.)

JUDICIAL DECISIONS

Cited in *Simmons v. State*, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

40-6-352. Protective headgear.

(a) No person shall operate or ride as a passenger upon a moped unless he or she is wearing protective headgear which complies with standards established by the commissioner of public safety. The commissioner in determining such standards shall consider the size, speed, and operational characteristics of the moped. Such standards need not necessarily be the same as for motorcyclists; however, any moped operator wearing an approved motorcycle helmet shall be deemed in compliance with this subsection. Operators of electric assisted bicycles may wear a properly fitted and fastened bicycle helmet which meets the standards of the American National Standards Institute or the Snell Memorial Foundation's Standards for Protective Headgear for Use in Bicycling, rather than a motorcycle helmet.

(b) The commissioner of public safety is authorized to approve or disapprove protective headgear for moped operators and to issue and enforce regulations establishing standards and specifications for the approval thereof. He or she shall publish in print or electronically lists by name and type of all protective headgear which have been approved by him or her. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241,

§ 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 236, § 4; Ga. L. 2000, p. 951, § 5A-10; Ga. L. 2005, p. 334, § 18-14/HB 501; Ga. L. 2010, p. 838, § 10/SB 388.)

40-6-353. Operation over certain roads may be prohibited.

The commissioner of transportation or local governing authorities having jurisdiction over public roads and highways may prohibit the operation of mopeds on public roads and highways within their jurisdiction if it is determined that such operation endangers the safety of the traveling public. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5.)

40-6-354. Rules and regulations.

The commissioner of public safety is authorized to promulgate rules and regulations to carry this part into effect and is authorized to establish regulations for safety equipment or standards for the operation of mopeds. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-11; Ga. L. 2005, p. 334, § 18-15/HB 501.)

PART 5

LOW-SPEED VEHICLES

40-6-360. Rights of persons operating low-speed vehicles.

Every person operating a low-speed vehicle shall be granted all the rights and shall be subject to all the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to those provisions of this chapter which by their nature can have no application. (Code 1981, § 40-6-360, enacted by Ga. L. 2002, p. 512, § 12.)

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles,
§ 723.

40-6-361. Traffic laws applicable to low-speed vehicles.

(a) All low-speed vehicles are entitled to full use of a lane, and no motor vehicle shall be driven in such a manner as to deprive any low-speed vehicle of the full use of a lane.

(b) The operator of a low-speed vehicle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a low-speed vehicle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Low-speed vehicles shall not be operated two or more abreast in a single lane. (Code 1981, § 40-6-361, enacted by Ga. L. 2002, p. 512, § 12.)

40-6-362. Operating low-speed vehicles on highways.

Low-speed vehicles shall be operated only on any highway where the posted speed limit does not exceed 35 miles per hour. The operator of a low-speed vehicle shall not operate such vehicle on any highway where the posted speed limit exceeds 35 miles per hour. (Code 1981, § 40-6-362, enacted by Ga. L. 2002, p. 512, § 12.)

PART 6

PERSONAL TRANSPORTATION VEHICLE TRANSPORTATION PLAN

Effective date. — This part became effective January 1, 2012.

40-6-363. Legislative intent.

The purpose of this part shall be to authorize any local authority to establish a personal transportation vehicle transportation plan for roadways and streets within the local authority's jurisdiction. It is the intent of the General Assembly that these plans be designed and developed to best serve the functional travel needs of the jurisdiction and to have the physical safety of the personal transportation vehicle occupants and their property as a major planning component. No local authority shall be liable for losses resulting from exercising or not exercising its authority to adopt a personal transportation vehicle transportation plan, failing to adopt such plan, making an inadequate plan, or negligently adopting such plan. (Code 1981, § 40-6-363, as enacted by Ga. L. 2014, p. 745, § 11/HB 877)

Effective date. — This Code section § 11/HB 877, effective July 1, 2014, redesignated former Code Section 40-6-363 as became effective July 1, 2014.

Editor's notes. — Ga. L. 2014, p. 745, present Code Section 40-6-367.

40-6-364. Definitions.

As used in this part, the term:

(1) "Personal transportation vehicle lane" or "PTV lane" means a portion of the roadway that has been designated by striping, pavement markings, or signage for the exclusive or preferential use of persons operating personal transportation vehicles. Such PTV lanes

shall at a minimum meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth in the American Association of State Highway and Transportation Officials Safety Manual.

(2) "Personal transportation vehicle transportation plan" or "PTV plan" means a detailed guide for the operation of personal transportation vehicles upon local streets and road segments passed by a local authority through ordinance or resolution.

(3) "Plan area" means the territory designated by a local authority in a personal transportation vehicle transportation plan that provides for use of personal transportation vehicles and may include privately owned land upon the consent of the landowner. (Code 1981, § 40-6-364, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

Effective date. — This Code section became effective July 1, 2014.

40-6-365. Standards for local authorities to establish personal transportation vehicle transportation plans.

(a) A local authority may, by ordinance or resolution, adopt a PTV plan.

(b) Prior to the enactment of a PTV plan, a local authority shall submit the plan to any agency having traffic law enforcement responsibilities in the plan area and allow for input and comment upon the PTV plan.

(c) A PTV plan shall:

(1) Establish minimum general design criteria for the development, planning, and construction of separated PTV lanes, including, but not limited to, the design speed of the facility, the space requirements of the personal transportation vehicle, and roadway design criteria. This paragraph shall not apply if a local authority's governing body and the law enforcement agency with primary traffic jurisdiction over the street in question concludes that the street or roadway segment is suitable to safely accommodate both regular vehicular traffic and personal transportation vehicles but shall be governed by the requirements listed in Code Section 40-6-368;

(2) Establish uniform specifications and symbols for signs, markers, and traffic control devices consistent with the most current version of the Manual on Uniform Traffic Control Devices to control personal transportation vehicle traffic; to warn of dangerous conditions, obstacles, or hazards; to designate the right of way between personal transportation vehicles, other motor vehicles, and bicycles;

to state the nature and destination of the PTV lane; and to warn pedestrians, bicyclists, and motorists of the presence of personal transportation vehicle traffic;

(3) Include a permitting process for personal transportation vehicles operating within the plan area. Such permitting process may include, but is not limited to, requirements regarding permit posting, permit renewal, operator education, and liability insurance. Local authorities may require a personal transportation vehicle to be permitted at least once every five years for a fee not to exceed \$15.00;

(4) Establish minimum safety criteria for personal transportation vehicle operators, including, but not limited to, requirements relating to personal transportation vehicle maintenance and personal transportation vehicle safety. Unless otherwise allowed by law under local ordinance established prior to January 1, 2012, as authorized by Part 3 of this article, operators shall be required to possess a valid driver's license and comply with the financial responsibility requirements for passenger vehicle operators;

(5) Establish restrictions limiting the operation of personal transportation vehicles to PTV lanes, paths, or other approved streets or road segments in the plan area; and

(6) Provide that any person operating a personal transportation vehicle in the plan area in violation of the PTV plan is guilty of an infraction punishable by a fine as established by law.

(d) A PTV plan may include, but is not limited to, the following elements:

(1) Route selection, which includes a finding that the route will accommodate personal transportation vehicles without an adverse impact upon traffic safety, and will consider, among other things, the travel needs of commuters and other users;

(2) Transportation interfacing, which shall include, but not be limited to, coordination with other modes of transportation;

(3) Community involvement in planning;

(4) Flexibility and coordination with long-range transportation planning;

(5) Provision for personal transportation vehicle related facilities including, but not limited to, special access points, charging stations, and personal transportation vehicle crossings;

(6) Provisions for parking facilities, including, but not limited to, community commercial centers, golf courses, public areas, parks, and other destination locations; and

(7) Provisions for special paving, road markings, signage and striping for PTV lanes, road crossings, parking, and circulation.

(e) A PTV plan shall not include the use of any state highway, or any portion thereof, or the operation of personal transportation vehicles except that a crossing of, or a PTV lane along, a state highway may be included in the plan if consistent with accepted guidelines, recommendations, and criteria with respect to planning, design, signage, operation, and maintenance of shared use paths or PTV lanes as set forth in the Manual on Uniform Traffic Control Devices and the American Association of State Highway and Transportation Officials Safety Manual. (Code 1981, § 40-6-365, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

Effective date. — This Code section became effective July 1, 2014.

40-6-366. Acquisition of property for PTV lanes.

A local authority that adopts a PTV plan may establish PTV lanes through the acquisition of property, including easements or rights of way, by dedication, purchase, or condemnation. (Code 1981, § 40-6-366, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

Effective date. — This Code section became effective July 1, 2014.

40-6-367. Part inapplicable to certain localities with prior ordinances governing PTV use.

This part shall have no application to any county or municipality that has enacted prior to January 1, 2012, an ordinance authorizing the operation of PTVs. (Code 1981, § 40-6-363, enacted by Ga. L. 2011, p. 247, § 2/SB 240; Code 1981, § 40-6-367, as redesignated by Ga. L. 2014, p. 745, § 11/HB 877.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 40-6-363 as present Code Section 40-6-367 and rewrote the Code section.

40-6-368. Requirements for streets or highways on which joint use by regular vehicle traffic and PTVs permitted.

Any street or highway segment upon which the joint use by regular vehicle traffic and personal transportation vehicles is permitted shall:

- (1) Have speed limits of 25 miles per hour or less, as established by an engineering and traffic survey; and
- (2) Have been determined by a qualified traffic engineer to accommodate personal transportation vehicles without adversely impact-

ing traffic safety or the travel needs of commuters and other users. (Code 1981, § 40-6-368, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

Effective date. — This Code section became effective July 1, 2014.

40-6-369. Manner in which PTVs may be driven.

(a) All personal transportation vehicles authorized by a PTV plan to operate on a street, road segment, or PTV lane are entitled to full use of a lane, and no motor vehicle shall be driven in such manner as to deprive a personal transportation vehicle of the full use of a lane.

(b) The operator of a personal transportation vehicle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a personal transportation vehicle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Personal transportation vehicles shall not be operated two or more abreast in a single lane. (Code 1981, § 40-6-369, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

Effective date. — This Code section became effective July 1, 2014.

40-6-369.1. Speed limits on streets authorized for PTV use.

Personal transportation vehicles shall only be operated on highways where the posted speed limit does not exceed 25 miles per hour. The operator of a personal transportation vehicle shall not operate such vehicle on any highway where the posted speed limit exceeds 25 miles per hour. (Code 1981, § 40-6-369.1, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

Effective date. — This Code section became effective July 1, 2014.

ARTICLE 14

EFFECT OF CHAPTER ON POWERS OF LOCAL AUTHORITIES

JUDICIAL DECISIONS

Chapter generally admissible in civil cases. — As Ga. L. 1974, p. 633 (see O.C.G.A. Art. 14, Ch. 6, T. 40) did not prevent local authorities with respect to streets and highways under their jurisdic-

tion and within the reasonable exercise of the police power from regulating or prohibiting stopping, standing, or parking in the course of which local authorities may by reference adopt any or all provisions of

former Code 1933, Ch. 68A, and as a violation which was both a violation of the state traffic regulations and the city ordinance may be tried in either jurisdiction, there seems no reason why that former chapter should not be generally admissi-

ble in civil cases with the burden on the party contending it inapplicable to prove any change effectuated by local authorities. *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

40-6-370. Uniform state-wide application of chapter.

The provisions of this chapter and the definitions contained in Code Section 40-1-1 shall be applicable and uniform throughout this state and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by the provisions of this chapter except as expressly authorized in Code Sections 40-6-371 and 40-6-372. (Code 1933, § 68A-1501, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-1606, are included in the annotations for this Code section.

Applicability of former provisions. — Former Code 1933, Ch. 68-16 applied to streets and highways within the corporate limits of municipalities as well as without. *Richards & Assocs. v. Studstill*, 92 Ga. App. 853, 90 S.E.2d 56 (1955), rev'd on other grounds, 212 Ga. 375, 93 S.E.2d 3 (1956) (decided under former Code 1933, § 68-1606).

Chapter made applicable to municipalities. — Former Code 1933, § 68E-209 (see O.C.G.A. § 40-8-28), relating to lights on parked vehicles, was made applicable to municipalities by former Code 1933, § 68-1606 (see O.C.G.A. § 40-6-370). *National Upholstery Co. v. Padgett*, 108 Ga. App. 857, 134 S.E.2d 856 (1964) (decided under former Code 1933, § 68-1606).

Cited in *Cofer v. Cook*, 141 Ga. App. 646, 234 S.E.2d 185 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-1606 are included in the annotations for this Code section.

City ordinance regulating parking

on state highway. — City may not enact an ordinance regulating parking on state highway without first receiving permission of the Department of Transportation. 1971 Op. Att'y Gen. No. 71-U71-3 (decided under former Code 1933, § 68-1606).

40-6-371. Powers of local authorities generally.

(a) This chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

- (1) Regulating or prohibiting stopping, standing, or parking;

(2) Regulating traffic by means of police officers or official traffic-control devices;

(3) Regulating or prohibiting processions or assemblages on the highways;

(4) Designating particular highways or roadways for use by traffic moving in one direction as authorized in Code Section 40-6-47;

(5) Establishing speed limits for vehicles in public parks, notwithstanding any provisions of law establishing a minimum speed limit for an area outside an urban or residential district;

(6) Designating any highway as a through highway or designating any intersection or junction of roadway as a stop or yield intersection or junction;

(7) Requiring the registration and inspection of bicycles, including the requirement of a registration fee;

(8) Designating any highway intersection as a “yield right of way” intersection and requiring vehicles facing a “yield right of way” sign to yield the right of way to other vehicles;

(9) Regulating or prohibiting the turning of vehicles or specified types of vehicles;

(10) Altering or establishing speed limits as authorized by law;

(11) Designating no-passing zones as authorized in Code Section 40-6-46;

(12) Prohibiting or regulating the use of controlled-access roadways by any class of vehicle or kind of traffic as authorized in Code Section 40-6-51;

(13) Prohibiting or regulating the use of heavily traveled streets by any class of vehicle or kind of traffic found to be incompatible with the normal and safe movement of traffic;

(14) Establishing minimum speed limits as authorized by law;

(15) Designating hazardous railroad grade crossings as authorized in Code Section 40-6-141;

(16) Designating and regulating traffic on play streets;

(17) Regulating persons propelling push carts;

(18) Regulating persons upon skates, coasters, sleds, and other toy vehicles;

(18.1) Regulating the operation of electric personal assistive mobility devices, provided that such regulations are no less restrictive than those imposed by Part 2A of Article 13 of this chapter;

(18.2) Regulating the operation of personal transportation vehicles, provided that such regulations comply with Parts 3 and 6 of Article 13 of this chapter;

(19) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; or

(20) Adopting such other traffic regulations as are specifically authorized by this chapter.

(a.1) No fine imposed by a local authority for violation of an ordinance or regulation for conduct which constitutes a violation of a provision of this chapter shall exceed any maximum fine specified by this chapter for such violation.

(b) No local authority shall erect or maintain any official traffic-control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the Department of Transportation of the State of Georgia. If this issue is on trial in a civil or criminal action, the proper authority shall be presumed.

(c) No ordinance or regulation enacted under paragraph (4), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (18.2) of subsection (a) of this Code section shall be effective until official traffic-control devices giving notice of such local traffic regulations are erected upon or at the entrances to the highway or the part thereof affected as may be most appropriate. (Ga. L. 1955, p. 736, § 1; Ga. L. 1973, p. 98, § 1; Code 1933, § 68A-1502, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1582, § 4; Ga. L. 1990, p. 2048, § 5; Ga. L. 2001, p. 770, § 3; Ga. L. 2003, p. 308, § 5; Ga. L. 2014, p. 745, § 12/HB 877.)

The 2014 amendment, effective July 1, 2014, inserted “of vehicle” in paragraphs (a)(12) and (a)(13); added paragraph (a)(18.2); and substituted “(18), or (18.2)” for “or (18)” in subsection (c).

Cross references. — Challenges to

speed limits or traffic laws established by local governing authorities, § 40-6-9.

Law reviews. — For note on the 2003 amendment of this Code section, see 20 Ga. St. U.L. Rev. 198 (2003).

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 1770(12), 1770(57) and Ga. L. 1953, Nov.-Dec. Sess., p. 556 are included in the annotations for this Code section.

Admissibility of chapter in civil cases. — As Ga. L. 1974, p. 633 (see

O.C.G.A. Art. 14, Ch. 6, T. 40) did not prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from regulating or prohibiting stopping, standing, or parking, in the course of duties they may by reference adopt any or all provisions of former Code

1933, Ch. 68A (see O.C.G.A. § 40-6-370 et seq.), and as a violation which was both a violation of the state traffic regulations and the city ordinance may be tried in either jurisdiction, there seems no reason why that former chapter should not be generally admissible in civil cases, with the burden on the party contending it inapplicable to prove any change effectuated by local authorities. *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

City's ordinances prohibiting the use of amphibious vehicles as tour vehicles in parts of the city were not preempted by the state law giving the Public Service Commission the authority to issue certificates of public convenience and necessity; the ordinances fall within the constitutional exception to the doctrine of preemption since the General Assembly enacted general laws authorizing the local government to exercise its police powers and enact the local laws at issue. *Old South Duck Tours, Inc. v. Mayor & Aldermen of Savannah*, 272 Ga. 869, 535 S.E.2d 751 (2000).

Charge to jury based on O.C.G.A. § 40-6-371 valid. *Banks v. City of Brunswick*, 529 F. Supp. 695 (S.D. Ga. 1981), aff'd, 667 F.2d 97 (11th Cir. 1982).

Ordinance failing to sufficiently define prohibited activity. — City ordinance which undertakes to make punishable the operation of an automobile upon one of the streets of the city "in a careless or reckless manner" is null and void because it fails to sufficiently define the prohibited act. *Hayes v. State*, 11 Ga. App. 371, 75 S.E. 523 (1912).

Regulations allowed within ordinance. — City ordinance regulating the operation of automobiles may contain other regulations, not consistent with the laws of the state, and dealing with circumstances which are not included within it, but the city ordinance must accord with the state speeding provisions. *Carter v. State*, 12 Ga. App. 430, 78 S.E. 205 (1913).

State's right to regulate inadequate municipal regulations. — State would

not abdicate right to deal with speed of automobiles in populous communities, when the dangers from the operation of such machines are far greater than elsewhere, if the municipal regulations should in any respect fall short of the state law on the subject. *Carter v. State*, 12 Ga. App. 430, 78 S.E. 205 (1913).

Municipal ordinance with speed limit greater than allowed by state. — Ordinance attempting to make punishable the running of automobiles in a certain manner at a rate of speed greater than ten miles per hour at corners and crossings within the limits of the municipality is void because the ordinance is in conflict with state law. *Carter v. State*, 12 Ga. App. 430, 78 S.E. 205 (1913).

Speeding automobile defying municipal limit. — Driver must so operate the driver's automobile as to have the automobile's speed at all times under the driver's control, and whenever it is necessary, for the preservation of either persons or property, that the automobile should be brought to a stop, the exercise of reasonable care requires that the vehicle be stopped instantly. *O'Dowd v. Newnham*, 13 Ga. App. 220, 80 S.E. 36 (1913).

Proximate cause and contributory negligence fact questions. — In view of the plaintiff's testimony as to the defendant's making a left turn in violation of a city ordinance, it was a question of fact for the trial judge to determine what was the proximate cause of the plaintiff's injury, and whether the negligence of the plaintiff or of the defendant caused or contributed to the plaintiff's injury. *Faggart v. Rowe*, 33 Ga. App. 422, 126 S.E. 731 (1925).

Uncontrolled intersection not "through street." — When it is undisputed that a collision in question occurred at an uncontrolled intersection, there is no merit to the contention that the street was a "through street" under a city ordinance. *Phillips v. Reece*, 106 Ga. App. 779, 128 S.E.2d 370 (1962).

Cited in *Russell v. Fletcher*, 244 Ga. 854, 262 S.E.2d 138 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Section is not in conflict with the state Constitution. — 1972 Op. Att'y Gen. No. 72-79.

Municipal erection of traffic control device. — Municipality may not, by ordinance, seek to regulate streets which are a part of the state highway system, unless the municipality is attempting to erect or maintain a traffic-control device on a road which is a part of the state highway system and written approval has first been obtained from the department. 1974 Op. Att'y Gen. No. U74-94.

Use of cameras for traffic control by local government. — Municipalities are not prohibited by Georgia's Constitution or laws from enacting ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U00-7.

Counties may enact ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U00-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 20 et seq.

ALR. — Validity of statute or ordinance forbidding running of automobile so as to inflict damage or injury, 47 ALR 255.

Power of municipal corporation to limit exclusive use of designated lanes or streets to buses and taxicabs, 43 ALR3d 1394.

40-6-372. Adoption of chapter by local authorities.

Local authorities by ordinance may adopt by reference any or all provisions of this chapter or of Code Section 40-1-1 without publishing or posting in full the provisions thereof. (Ga. L. 1955, p. 736, § 1; Ga. L. 1973, p. 98, § 1; Code 1933, § 68A-1503, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1582, § 4; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-1680, are included in the annotations for this Code section.

Constitutionality. — Ga. L. 1955, p. 566, which based its application upon population, was constitutional. *Gordon v. Green*, 228 Ga. 505, 186 S.E.2d 719 (1972) (decided under former Code 1933, § 68-1680).

Municipal authorities may localize state provisions. — Ga. L. 1974, p. 633, § 1 (see O.C.G.A. §§ 40-6-372 and 40-6-374) were laws of general application and these laws constituted "express legislative authority," which conferred the power upon local authorities to adopt any

or all provisions of former Code 1933, Ch. 68A and make those provisions local ordinance violations. *Akin v. Hardison*, 245 Ga. 57, 262 S.E.2d 814 (1980).

Punishing state offenses as municipal violators. — Power of a municipality to punish as a municipal offense that which is by general law of the state also a state offense must be conferred by a general rather than a special act of the legislature, and the grant of this power must be clearly expressed. The mere authority granted in a municipal charter to enact ordinances for the general welfare is not a sufficient delegation of this authority. Furthermore, the act which the municipality seeks to punish as a municipal offense must be such as affects the peace and good

order of the municipality and contain some characterizing ingredient not contained in the state offense. *Green*, 228 Ga. 505, 186 S.E.2d 719 (1972) (decided under former Code 1933, § 68-1680). *Gordon v.*

RESEARCH REFERENCES

ALR. — Conflict between statutes and local regulations as to automobiles, 21 ALR 1186; 64 ALR 993; 147 ALR 522.

40-6-373. Effect of future changes in chapter.

A future amendment or repeal of a provision of this chapter or of Code Section 40-1-1 shall so amend or repeal the pertinent provision, if any, of the original ordinance adopted by a local authority pursuant to the authority of Code Section 40-6-372 without any action by such local authority being required. (Code 1933, § 68A-1504, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 2048, § 5.)

40-6-374. Form of adopting ordinance.

Local authorities shall use the following wording or similar wording in adopting by reference the provisions of this chapter or the definitions contained in Code Section 40-1-1:

(Municipality or County) of _____

Ordinance _____ number

An ordinance adopting the Georgia Uniform Rules of the Road, Code Sections [_____ to _____ (except for Code Sections _____)] of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, to regulate traffic upon the public streets of the (Municipality or County) of _____ and repealing ordinance number _____ and all other ordinances and sections of ordinances in conflict herewith.

It is ordained by _____ as follows:

Section 1. Adoption by reference. Pursuant to Chapter 6 of Title 40 of the Official Code of Georgia Annotated, Code Sections 40-6-372 through 40-6-376, Code Sections [_____ to _____ (except for Code Sections _____)] of that chapter known as the Uniform Rules of the Road and the definitions contained in Code Section 40-1-1 are hereby adopted as and for the traffic regulations of this (Municipality or County) with like effect as if recited herein.

Section 2. Penalties. Unless another penalty is expressly provided by law, every person convicted of a violation of any provision

of this ordinance shall be punished by a fine of not more than _____ dollars or by imprisonment for not more than _____ days or by both such fine and imprisonment.

Section 3. Repeal. The (existing ordinances covering the same matters as embraced in this ordinance) are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

Section 4. Effective date. This ordinance shall take effect from and after the _____ day of _____, _____.

(Code 1933, § 68A-1505, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 81, § 40.)

JUDICIAL DECISIONS

Municipal localization of state provisions. — Ga. L. 1974, p. 633, § 1 (see O.C.G.A. §§ 40-6-372 and 40-6-374) were laws of general application and these laws constituted “express legislative authority,” which conferred the power upon local

authorities to adopt any or all provisions of former Code 1933, Ch. 68A and make those provisions local ordinance violations. *Akin v. Hardison*, 245 Ga. 57, 262 S.E.2d 814 (1980).

40-6-375. Citations for violations.

It shall be sufficient in citing a violation of a provision of this chapter to refer to the ordinance number of the enacting ordinance, provided that the citation form used is the one developed by the commissioner of public safety under the authority of Code Section 40-13-1. (Code 1933, § 68A-1506, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-376. Prosecution under this chapter or local ordinance; double jeopardy.

(a) Any offense, except a violation of subsection (b) of Code Section 40-6-270 or a violation of Code Section 40-6-393, which is a violation of a provision of this chapter and of a local ordinance may, at the discretion of the local law enforcement officer or prosecutor, be charged as a violation of the state statute or of the local ordinance. A violation of subsection (b) of Code Section 40-6-270 or a violation of Code Section 40-6-393 shall be charged as a state violation.

(b) If the offense charged under an ordinance constitutes a violation of any provision of this chapter, the defendant may request transfer of the charge to the appropriate state tribunal. If the defendant so requests, the recorder or city judge, after conducting a commitment

hearing in which probable cause for arrest is found, or upon obtaining a waiver of commitment hearing, shall summarily fix the defendant's bond and bind his case over to the appropriate state tribunal.

(c) No person tried in any court for a violation of this chapter or any ordinance adopted pursuant thereto shall thereafter be tried in any court for the same offense. A conviction for the violation of an ordinance adopted pursuant to this chapter shall be considered a prior conviction for all purposes under this chapter and under Chapter 13 of this title.

(d) No court, other than a court having jurisdiction to try a person charged with a violation of Code Section 40-6-393, shall have jurisdiction over any offense arising under the laws of this state or the ordinances of any political subdivision thereof, which offense arose out of the same conduct which led to said person's being charged with a violation of Code Section 40-6-393 and any judgment rendered by such court shall be null and void. (Ga. L. 1955, p. 736, §§ 1, 2; Code 1933, § 68A-1507, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1582, § 4; Ga. L. 1982, p. 1694, §§ 2, 4; Ga. L. 1988, p. 1499, § 2; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For survey article on criminal law and procedure for the period

from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

JUDICIAL DECISIONS

Charging of violation of statute and ordinance interchangeable. — Any violation of former Code 1933, Ch. 68A and of a local ordinance may, at the discretion of the local prosecutor, be charged as a violation of the state statute or the local ordinance. *Diamond v. State*, 151 Ga. App. 690, 261 S.E.2d 434 (1979) (decided prior to 1982 amendment; see O.C.G.A. Ch. 6, T. 40).

Prosecutor may select the forum. — O.C.G.A. § 40-6-376(a) expressly grants the prosecutor the discretion to select the forum. *State v. Serio*, 257 Ga. App. 369, 571 S.E.2d 168 (2002).

State authorized to seek transfer from municipal to state court. — Trial court erred in concluding that the state was not authorized to seek transfer from municipal to state court as the prosecutor properly brought a state charge against the defendant and entered a nolle prosequi on the local ordinance violation; the prosecutor was authorized to bring the charges in state court, and the trial court erred in finding otherwise and in transfer-

ring the case back to municipal court. *State v. West*, 258 Ga. App. 269, 574 S.E.2d 365 (2002).

Jurisdiction over traffic offenses. — Under O.C.G.A. § 40-6-376(a), any violation of state traffic law which is also a violation of a local ordinance may, at the prosecutor's discretion, be charged as a violation of either the state statute or the local ordinance; under O.C.G.A. § 40-6-376(b), if an offense is charged under a local ordinance, but also constitutes a violation of state law, the defendant may request a transfer of the charge from a lower court to "the appropriate state tribunal," and if the defendant makes such a request, a city or recorder's court judge shall bind the defendant's case over to the appropriate state tribunal, after fixing bond and determining whether there was probable cause for arrest. *State v. Serio*, 257 Ga. App. 369, 571 S.E.2d 168 (2002).

Inapplicable. — Defendant's offenses were charged as violations of state laws, not local ordinances, so O.C.G.A.

§ 40-6-376(b) was inapplicable because the defendant waived the defendant's right to a jury trial and jurisdiction was proper in either the recorder's court or the state court. *State v. Serio*, 257 Ga. App. 369, 571 S.E.2d 168 (2002).

Chapter generally admissible in civil cases. — As Ga. L. 1974, p. 633 (see O.C.G.A. Art. 14, Ch. 6, T. 40) did not prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from regulating or prohibiting stopping, standing, or parking, in the course of which local authorities may by reference adopt any or all provisions of former Code 1933, Ch. 68A, and as a violation, which is both a violation of the state traffic regulations, and the city ordinance may be tried in either jurisdiction, there seems no reason why that former chapter should not be generally admissible in civil cases with the burden on the party contending the provision inapplicable to prove any change effectuated by local authorities. *Fabian v. Vincent*, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

Existence of municipal ordinances must be pled and proved as the court will not take judicial notice of the existence of such ordinances. *Hodges v. State*, 100 Ga. App. 611, 112 S.E.2d 373 (1959).

Res judicata conviction of either state law or municipal ordinance. — Conviction of violation of either the state law or municipal ordinance shall constitute res judicata as to the other tribunal for the same offense. Merely because an identical municipal ordinance exists, as to a traffic regulation, the jurisdiction of neither the state nor the municipal court is preempted by the other until there has been a conviction in one of the courts. *Hodges v. State*, 100 Ga. App. 611, 112 S.E.2d 373 (1959).

Lack of jurisdiction. — As the focus of a jurisdictional statute was a charge against a specific person, it divested a probate court of jurisdiction over an underlying misdemeanor offense, like reckless driving, when the person was charged with felony vehicular homicide. *State v. Perkins*, 276 Ga. 621, 580 S.E.2d 523 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Ga. L. 1955, p. 736 was not in conflict with the state Constitution. 1972 Op. Att'y Gen. No. 72-79.

RESEARCH REFERENCES

ALR. — Liability for accident arising from motorist's failure to give signal for right turn, 38 ALR2d 143.

ARTICLE 15

SERIOUS TRAFFIC OFFENSES

Law reviews. — For note on the 1994 amendments of Code Sections 40-6-391, 40-6-391.1, and 40-6-392 of this article, see 11 Ga. St. U.L. Rev. 215 (1994). For note on the 1994 amendments of Code Sections 40-6-391.1 and 40-6-395 of this

article, see 11 Ga. St. U.L. Rev. 223 (1994). For note on 1995 amendments of Code sections in this article, see 12 Ga. St. U.L. Rev. 289 and 295 (1995). For note on 1999 amendments to Code sections in this article, see 16 Ga. St. U.L. Rev. 200 (1999).

JUDICIAL DECISIONS

Unintentional vehicular death generally misdemeanor offense. — General Assembly excepted vehicular deaths from other forms of involuntary manslaughter and established the offense as a misdemeanor except in cases of reckless

driving or vehicular offenses connected with police vehicles. *Berrian v. State*, 139 Ga. App. 571, 228 S.E.2d 737 (1976).

Cited in *Cofer v. Hawthorne*, 154 Ga. App. 875, 270 S.E.2d 84 (1980).

RESEARCH REFERENCES

Am. Jur. Trials. — Motor Vehicle Collisions — Agency Relationship, 8 Am. Jur. Trials 1.

Unwitnessed Automobile Accident Cases, 18 Am. Jur. Trials 443.

Litigation of Collision — Caused Automobile Fuel Tank Fire Cases, 23 Am. Jur. Trials 383.

Voir Dire in Low Speed Collision Cases — Plaintiff's View, 96 Am. Jur. Trials 1.

ALR. — Acquittal or conviction of one offense in connection with operation of

automobile as bar to prosecution for another, 172 ALR 1053.

Inference or presumption that owner of motor vehicle was its driver at time of traffic, driving, or parking offense, 49 ALR2d 456.

What constitutes "minor traffic infraction" excludible from calculation of defendant's criminal history under United States sentencing guidelines § 4A1.2(c)(2), 113 ALR Fed. 561.

40-6-390. Reckless driving.

(a) Any person who drives any vehicle in reckless disregard for the safety of persons or property commits the offense of reckless driving.

(b) Every person convicted of reckless driving shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00 or imprisonment not to exceed 12 months, or by both such fine and imprisonment, provided that no provision of this Code section shall be construed so as to deprive the court imposing the sentence of the power given by law to stay or suspend the execution of such sentence or to place the defendant on probation. (Code 1933, § 68A-901, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 350, § 2; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For annual survey of criminal law, see 56 Mercer L. Rev. 153 (2004).

JUDICIAL DECISIONS

ANALYSIS

- GENERAL CONSIDERATION
- PROCEDURE
- APPLICATION
- JURY ISSUES AND INSTRUCTION

General Consideration

Editor's notes. — In light of the similarity of the Statutory provisions, decisions under former Ga. L. 1939, p. 295, are included in the annotations for this Code section.

Section enforceable. — Use of the words "willful or wanton" in former Ga. L. 1939, p. 295 (see O.C.G.A. § 40-6-390) was not so vague and indefinite as to be incapable of enforcement. *Lancaster v. State*, 83 Ga. App. 746, 64 S.E.2d 902 (1951) (decided under former Ga. L. 1939, p. 295).

Section informs person of legal violation. — Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-390(a)) is sufficiently definite to inform a person of common intelligence as to when the person is violating the law. *Wilson v. State*, 245 Ga. 49, 262 S.E.2d 810 (1980).

Reckless driving charges not affected by unconstitutionality of O.C.G.A. § 40-6-391(a)(6). — Fact that O.C.G.A. § 40-6-391(a)(6) was held unconstitutional as a denial of equal protection did not apply to require dismissal of charges against the defendant that the defendant committed reckless driving in violation of subsection (a) of O.C.G.A. § 40-6-390 and first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a) by reckless driving; the charges merely included the fact that marijuana was found in the defendant's blood because the marijuana was relevant to a determination that the defendant drove "in reckless disregard for the safety of persons or property." *Ayers v. State*, 272 Ga. 733, 534 S.E.2d 76 (2000).

Reckless driving does not involve specific, intended victims. — Trial court did not err in quashing that part of the indictment that charged the defendant with "reckless driving" as to three passengers in another automobile after the driver of that other automobile cut the defendant's vehicle off in traffic; "reckless driving" did not involve specific, intended victims, but only required the state to show that the defendant drove the defendant's car in a manner exhibiting reckless disregard for the safety of persons or property, and, thus, the three counts of the indictment identifying the three passen-

gers as "victims" of the defendant's reckless driving could not stand. *State v. Burrell*, 263 Ga. App. 207, 587 S.E.2d 298 (2003).

Reckless driving and reckless conduct do not merge. — Trial court did not err by failing to merge the crimes of reckless driving, O.C.G.A. § 40-6-390, and reckless conduct, O.C.G.A. § 16-5-60, for punishment because the two offenses did not merge for sentencing when §§ 40-6-390 and 16-5-60 each had a provision that required proof of a fact that the other did not, and to establish a violation of § 40-6-390, the state only had to prove that the defendant drove the car in a manner exhibiting reckless disregard for the safety of persons or property; reckless conduct requires proof of harm or an actual threat of harm to the bodily safety of another person and does not require that the crime be committed while driving a motor vehicle, but reckless driving does not require that there be an injured or threatened party and instead merely requires that the state prove a general disregard for the safety of persons or property while driving a motor vehicle. *Howard v. State*, 301 Ga. App. 230, 687 S.E.2d 257 (2009).

Speeding merged into reckless driving. — Defendant's conviction and sentence for speeding was vacated because the offense of speeding should have been merged into the offense of reckless driving; the defendant should have been convicted and sentenced only for reckless driving. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Prosecution of homicide caused solely through violation of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-390) must be under the vehicular homicide provision, Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-390), and not as for murder or involuntary manslaughter. *State v. Foster*, 141 Ga. App. 258, 233 S.E.2d 215, aff'd, 239 Ga. 302, 236 S.E.2d 644 (1977).

Predication of murder charge on section. — Murder charge cannot be predicated upon homicide resulting from "reckless disregard for ... safety of persons," as that phrase is used in Ga. L. 1974, p. 633, § 1 (see O.C.G.A.

§ 40-6-390). *Foster v. State*, 239 Ga. 302, 236 S.E.2d 644 (1977).

Cited in *Torley v. State*, 141 Ga. App. 366, 233 S.E.2d 476 (1977); *Brock v. State*, 146 Ga. App. 78, 245 S.E.2d 442 (1978); *State v. Black*, 149 Ga. App. 389, 254 S.E.2d 506 (1979); *Head v. State*, 246 Ga. 360, 271 S.E.2d 452 (1980); *McSears v. State*, 247 Ga. 48, 273 S.E.2d 847 (1981); *Hardison v. Haslam*, 250 Ga. 59, 295 S.E.2d 830 (1982); *Williams v. State*, 171 Ga. App. 546, 320 S.E.2d 389 (1984); *Anderson v. State*, 254 Ga. 470, 330 S.E.2d 592 (1985); *Ricks v. State*, 184 Ga. App. 428, 361 S.E.2d 829 (1987); *Davis v. State*, 272 Ga. 818, 537 S.E.2d 327 (2000); *English v. State*, 261 Ga. App. 157, 582 S.E.2d 136 (2003); *Crossley v. State*, 261 Ga. App. 250, 582 S.E.2d 204 (2003); *State v. Lowe*, 263 Ga. App. 1, 587 S.E.2d 169 (2003); *In the Interest of W.N.J.*, 268 Ga. App. 637, 602 S.E.2d 173 (2004); *Hannah v. State*, 280 Ga. App. 230, 633 S.E.2d 800 (2006); *Jaheni v. State*, 285 Ga. App. 266, 645 S.E.2d 735 (2007); *Leachman v. State*, 286 Ga. App. 708, 649 S.E.2d 886 (2007); *Green v. State*, 287 Ga. App. 248, 651 S.E.2d 174 (2007).

Procedure

Language of indictment. — When the indictment charging the defendant with homicide by vehicle tracked the language of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-390), accusing the defendant of “driving his motor vehicle in a reckless disregard for the safety of the deceased,” but also contained the additional phrase “by failing to grant the right of way to oncoming traffic,” a common-sense reading of the entire indictment made it clear that the defendant was being so charged, and the defendant was properly charged. *Ivie v. State*, 151 Ga. App. 496, 260 S.E.2d 543 (1979).

Appellate court found that because the count of the indictment charging the defendant with reckless driving included the “crucial language” that the defendant drove with reckless disregard for the safety of persons and property, count two, charging the defendant with vehicular homicide based on that predicate act, contained the elements of the offense and apprised the defendant of the charges that

the defendant had to be prepared to answer at trial; thus, count two was legally sufficient and the trial court correctly denied the defendant’s motion in arrest of judgment. *Howard v. State*, 252 Ga. App. 487, 555 S.E.2d 884 (2001).

Trial court did not err by finding that the defendant waived the defendant’s right to challenge the indictment charging the defendant with reckless driving because the defendant failed to timely file a written special demurrer. *Lauderback v. State*, 320 Ga. App. 649, 740 S.E.2d 377 (2013).

Indictment for reckless driving sufficiently alleged first degree vehicular homicide. — By alleging that a defendant violated the reckless driving statute, O.C.G.A. § 40-6-390, an indictment incorporated the elements of that offense that the defendant drove the vehicle in reckless disregard for the safety of persons or property and was sufficient to assert an indictment for vehicular homicide in the first degree. *State v. Biddle*, 303 Ga. App. 384, 693 S.E.2d 539 (2010).

Motion for acquittal properly denied. — Trial court properly denied defendant’s motion for a directed verdict of acquittal when: (1) the defendant missed the stop sign; (2) the defendant proceeded across four lanes of traffic; (3) the defendant plowed into the victims’ car, causing one victim to die; (4) the defendant was swaying, slurring defendant’s speech, and had an odor of alcohol about the defendant’s body; and (5) there were no skid marks in the intersection. *Sanders v. State*, 258 Ga. App. 16, 572 S.E.2d 712 (2002).

Mutually exclusive verdict of assault on peace officer and serious injury by vehicle. — Defendant’s convictions of aggravated assault on a peace officer and serious injury by vehicle based on reckless driving were mutually exclusive as it was reasonably probable that the jury found the defendant guilty of aggravated assault under O.C.G.A. § 16-5-20(a)(1) for intentionally attempting to commit a violent injury to the officer. A verdict of guilt under § 16-5-20(a)(1), requiring proof of intent, was mutually exclusive with a verdict of guilt as to serious injury by vehicle pred-

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icated on reckless driving. *Dryden v. State*, 285 Ga. 281, 676 S.E.2d 175 (2009).

No merger with serious injury by vehicle charge. — Trial court did not err by failing to merge a reckless-driving charge into a serious-injury-by-vehicle charge because the two crimes were entirely separate and distinct, requiring a showing of different elements and based on the defendant's drunk driving of a four-wheeler ATV with a 10-year-old passenger, who was brain-damaged when the defendant clipped a tractor and flipped the ATV; the state used the evidence of the clipping of the tractor scoop, which caused the rollover and injury to the child, as the elements of the serious-injury-by-vehicle offense, which was separate from and sequential to the reckless-driving offense, which was premised on the defendant's intoxication. *Croft v. State*, 278 Ga. App. 107, 628 S.E.2d 144 (2006).

Application

Location of vehicle not material element. — Exact location is not a material element of the offense of reckless driving and a fatal variance did not exist as to the charge even though the state failed to prove that the defendant drove recklessly in a certain block of road as alleged in the indictment. *Chavous v. State*, 205 Ga. App. 455, 422 S.E.2d 327 (1992).

Adequate grounds for arrest. — Defendant's claim, in defense of a charge of aggravated assault against police officers, that the defendant was resisting an unlawful arrest, was meritless. As the officers observed the defendant driving in a reckless manner, the officers were authorized to stop and arrest the defendant for reckless driving. *Mackey v. State*, 296 Ga. App. 675, 675 S.E.2d 567 (2009).

Sufficient evidence to withstand motion for directed verdict. — Evidence was sufficient to deny a defendant's motion for a directed verdict in a prosecution for reckless vehicular homicide, reckless driving, DUI, running a red light, and failure to exercise due care when, after smoking crack and arguing with the defendant's former spouse, the defendant had struck a car from behind, struck a

pedestrian, and collided with a burgundy car, killing the burgundy car's two occupants; the defendant was found slumped over on the front driver's side of the pickup truck the defendant was driving. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Sufficient evidence to find defendant guilty. — When there was eyewitness testimony presented at the trial that the defendant was driving in excess of the speed limit immediately after the collision, evidence of the defendant's flight from the scene of the collision, and also the defendant's own statement that the defendant was driving "too fast" (which, though not necessarily inculpatory, was properly admitted for the jury to determine whether or not it constituted an admission), there was sufficient evidence from which the jury could find the defendant guilty of reckless driving. *Deshazier v. State*, 155 Ga. App. 526, 271 S.E.2d 664 (1980).

When the state's evidence showed that the defendant was driving under the influence of alcohol (.16 grams percent) at a high rate of speed without any lights, recklessly passed two other vehicles immediately prior to the collision with the victim, and was driving in the wrong lane when the defendant crashed into the victim's car, the evidence was sufficient to enable any rational trier of fact to find that a causal connection existed between the defendant's violation of O.C.G.A. § 40-6-390 or O.C.G.A. § 40-6-391 and the victim's death and thus to find the defendant guilty beyond a reasonable doubt of the offense of homicide by vehicle in the first degree. *McNabb v. State*, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

When there was evidence that the defendant was driving at an excessive speed in disregard of a police roadblock, the evidence was sufficient to find the defendant guilty. *Duncan v. State*, 202 Ga. App. 456, 415 S.E.2d 7 (1992).

When the evidence showed that the defendant lost control of the defendant's vehicle while the defendant was speeding and attempting to pass in a no-passing zone and that the defendant had ingested both alcohol and cocaine, the defendant was properly convicted of reckless driving.

Gentry v. State, 236 Ga. App. 820, 513 S.E.2d 528 (1999).

Evidence was sufficient to prove that the defendant was guilty of reckless driving and attempting to elude an officer when the defendant led the officer on a high-speed chase driving on the wrong side of the road and wilfully failed to bring the defendant's car to a stop after the officer activated the patrol car's blue lights and siren. Brackins v. State, 249 Ga. App. 788, 549 S.E.2d 775 (2001).

Evidence that the defendant drove the defendant's tractor-trailer at a high rate of speed through a construction zone with signs and indications that slow-moving traffic was in the area was sufficient to support the defendant's conviction for homicide by vehicle in the first degree as the evidence showed that the collision the defendant caused which killed the victim was not an unfortunate accident for which the defendant would not be liable, but instead was the result of defendant's reckless driving in disregard for the safety of other people. Wilkes v. State, 254 Ga. App. 447, 562 S.E.2d 519 (2002).

Sufficient evidence supported the verdict that the defendant committed reckless driving in violation of O.C.G.A. § 40-6-390(a) after the defendant, while driving an 18-wheeler truck, made an illegal U-turn near a tunnel, blocking all four lanes of oncoming traffic and placing other motorists in jeopardy, particularly those exiting the tunnel, as the motorist had limited visibility. Pennington v. State, 254 Ga. App. 837, 564 S.E.2d 219 (2002).

Evidence was sufficient to support a reckless driving conviction after a juvenile was driving 112 miles per hour, 42 miles per hour over the speed limit, and was "passing cars like a rocket, and flying down the highway;" for procedural and fair trial reasons, however, the conviction was reversed. In the Interest of J.C., 257 Ga. App. 657, 572 S.E.2d 21 (2002).

Evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the defendant was driving the defendant's vehicle in a manner exhibiting a reckless disregard for the safety of others under O.C.G.A. § 40-6-390(a) as the defendant was distraught, had consumed alcohol, and was driving outside

the defendant's lane of travel when the defendant struck from behind the victim on a bicycle, which had visible reflectors. Lesh v. State, 259 Ga. App. 325, 577 S.E.2d 4 (2003).

Evidence that the defendant, during a high-speed motor vehicle chase, drove the defendant's vehicle on the wrong side of the road, ran a stop sign, and struck a curb was sufficient to support the defendant's conviction for reckless driving. Arnold v. State, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Evidence was sufficient to convict the defendant for reckless driving after the police officer testified that the defendant was driving 24 mph above the speed limit on a city street near pedestrians; in addition, the defendant showed signs of impairment due to alcohol consumption. This evidence was sufficient to show that the defendant acted with a reckless disregard for public safety as required for a reckless driving conviction. Fraser v. State, 263 Ga. App. 764, 589 S.E.2d 329 (2003).

When evidence that the defendant's blood tested positive for marijuana use within 12 hours of a collision was properly introduced and when testimony by an accident reconstruction expert and a witness indicated that the defendant was traveling recklessly on the wrong side of the road when the defendant struck the victim's vehicle, the defendant was properly found guilty of first-degree vehicular homicide and reckless driving. Upshaw v. State, 264 Ga. App. 878, 592 S.E.2d 523 (2003).

Evidence was sufficient to convict the defendant beyond a reasonable doubt of reckless driving under O.C.G.A. § 40-6-390(a) when the defendant was driving at a speed much faster than the surrounding vehicles, the defendant "punched" the accelerator, the defendant made abrupt lane changes, and the defendant ran a stop sign. Pinch v. State, 265 Ga. App. 1, 593 S.E.2d 1 (2003).

There was sufficient evidence to support the convictions for reckless driving and failure to exercise due care because the evidence demonstrated that the defendant was driving above the speed limit without headlights on a rainy night, was

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looking down instead of watching the road ahead, and neither sounded the defendant's horn nor applied the defendant's brakes when the defendant saw the victims just before hitting the victims. *Winston v. State*, 270 Ga. App. 664, 607 S.E.2d 147 (2004).

Evidence supported the defendant's reckless driving conviction as a police officer testified that the defendant crossed the center line while driving. *Morrison v. State*, 272 Ga. App. 34, 611 S.E.2d 720, *aff'd*, 280 Ga. 222, 626 S.E.2d 500 (2006).

Evidence was sufficient to support the defendant's convictions for driving under the influence, vehicular homicide, reckless driving, and other charges as the evidence showed that the defendant was caught trying to take merchandise from a store, and then struck and killed the victim as the defendant left the store parking lot and turned on to a highway at a time when the defendant admittedly was under the influence of drugs. *Cromartie v. State*, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

When the defendant, who was under the influence of methamphetamine, drove on the wrong side of the road and injured a motorist, and another motorist went to the first motorist's assistance and was killed by an oncoming vehicle, it was not improper for a jury to reject a claim that the defendant did not proximately cause the victim's death and return a guilty verdict of vehicular manslaughter, under O.C.G.A. § 40-6-393, because there was evidence that the defendant's negligence substantially contributed to the victim's death. *McGrath v. State*, 277 Ga. App. 825, 627 S.E.2d 866 (2006), *cert. denied*, 2007 U.S. LEXIS 2328 (U.S. 2007).

Convictions of driving under the influence of alcohol to the extent that it was less safe to drive, O.C.G.A. § 40-6-391(a)(1), reckless driving, O.C.G.A. § 40-6-390, and failure to maintain a lane, O.C.G.A. § 40-6-48, were supported by sufficient evidence since, when an officer stopped to assist the defendant, whose car was parked on the side of a road, the defendant told the officer that the defendant had driven off the road, the officer found tire marks and a fender in

the area where the defendant ran off the road and the defendant's vehicle was missing the vehicle's left front fender, the officer noticed a strong odor of alcohol on the defendant's breath, the defendant admitted to drinking for over four hours and could not tell the officer how many drinks had been consumed, and the defendant then failed field sobriety tests. *Taylor v. State*, 278 Ga. App. 181, 628 S.E.2d 611 (2006).

Reckless driving conviction was not subject to a reversal on appeal as sufficient evidence was presented that the defendant's conduct in almost hitting a police officer who was standing on the side of the highway while traveling at a high rate of speed constituted a reckless disregard for the safety of others. *Graves v. State*, 280 Ga. App. 420, 634 S.E.2d 186 (2006).

See *Newton v. State*, 280 Ga. App. 709, 634 S.E.2d 839 (2006).

Evidence supported a defendant's convictions for fleeing and attempting to elude a police officer as an underlying offense for felony murder, theft by taking, vehicular homicide, disregarding a traffic control device, failing to stop at a stop sign, and reckless driving as: (1) the defendant stole a vehicle and was spotted by an officer shortly after the vehicle was reported as stolen; (2) when the officer began to follow the vehicle, the vehicle rapidly accelerated; (3) the officer followed the stolen vehicle for several blocks, with both vehicles traveling between 60-70 miles per hour; (4) the vehicle continued to accelerate after the officer turned on the officer's blue lights and siren; (5) when the stolen vehicle ran a red light, the vehicle struck a car, killing the driver; and (6) the officer and the owner of the stolen vehicle identified the defendant as the person driving the stolen vehicle. *Ferguson v. State*, 280 Ga. 893, 635 S.E.2d 144 (2006).

Given evidence from an ensuing police officer identifying the defendant as the driver of the vehicle stopped, and because the jury was the judge of the credibility of the witnesses presented at trial, and was authorized to reject the defendant's alibi defense, sufficient evidence was presented to support the defendant's convictions for reckless driving, failure to maintain a

lane, driving with defective equipment, fleeing or attempting to elude a police officer, and obstruction of a police officer. *Daniel v. State*, 282 Ga. App. 291, 638 S.E.2d 430 (2006).

In a defendant's trial for reckless driving and driving under the influence of alcohol to the extent that it was less safe to drive, arising out of an incident in which the defendant's car spun out of control and struck another car, the trial court did not err in refusing to give a jury instruction on the defense of accident under O.C.G.A. § 16-2-2; the defendant was not entitled to a jury instruction on that affirmative defense because the defendant did not admit to driving recklessly or under the influence of alcohol to the extent that it was less safe to drive. *Rutland v. State*, 282 Ga. App. 728, 639 S.E.2d 628 (2006).

Sufficient evidence existed to support a defendant's conviction for reckless driving because the evidence established that, while impaired by alcohol, the defendant, in the midst of other traffic, blatantly ran a red light at a busy intersection, exceeded the speed limit by 15 miles per hour, and wove in and out of the lane. *Horne v. State*, 286 Ga. App. 712, 649 S.E.2d 889 (2007), cert. denied, 2007 Ga. LEXIS 744 (Ga. 2007).

Given that sufficient evidence was presented through the testimony of the arresting officer, the property damage victims, and the defendant's admissions, and a 16-year gap between the current DUI offense and a prior DUI arrest did not require exclusion of the latter as a similar transaction as it provided evidence of the defendant's bent of mind to get behind the wheel of a vehicle when it was less safe to do so, the defendant's conviction for the recent offense was upheld on appeal; thus, the trial court did not err in denying the defendant's motion for a directed verdict of acquittal. *Evans v. State*, 287 Ga. App. 74, 651 S.E.2d 363 (2007).

Evidence authorized the jury to find the defendant guilty of reckless driving, O.C.G.A. § 40-6-390(a), beyond a reasonable doubt as the state presented evidence that the defendant was legally intoxicated, and by the defendant's own admission, the defendant was driving a vehicle

at a significant rate of speed when the defendant took the defendant's eyes off the roadway and became unable to "handle the speed." After "fishtailing" and skidding, the defendant began spinning and rolling as the defendant exited the roadway. *Schlanger v. State*, 290 Ga. App. 407, 659 S.E.2d 823 (2008).

Evidence supported the defendant's conviction for reckless driving, O.C.G.A. § 40-6-390(a), as the defendant admittedly exceeded the speed limit to some degree, and a witness reported that the defendant's truck "flew" down the street. *Hughes v. State*, 290 Ga. App. 475, 659 S.E.2d 844 (2008).

Evidence that the defendant eluded police at 75 miles per hour (mph) in a 25 mph zone, ran several stop signs, abandoned the car, and fled on foot was sufficient to convict the defendant of reckless driving in violation of O.C.G.A. § 40-6-390(a). *Bridges v. State*, 293 Ga. App. 783, 668 S.E.2d 293 (2008).

Sufficient evidence supported a defendant's conviction for reckless driving under O.C.G.A. § 40-6-390. While the defendant's car was about two car lengths behind an off-duty police officer's car, defendant was laying drags in a drive-thru line, caused the defendant's vehicle to swerve, and was visibly impaired. *Griffis v. State*, 295 Ga. App. 903, 673 S.E.2d 348 (2009).

Evidence supported the defendant's conviction for reckless driving because the defendant's drinking was established by evidence that the defendant's blood-alcohol level was between .078 and .115 at the time of the incident, and the defendant drove the vehicle off the roadway, spun out of control, and struck an electrical pole; the defendant drove with cruise control on although it was raining, the evidence indicated that the road was in good condition, despite the defendant's testimony to the contrary, and the manner in which the defendant drove suggested the negative influence of intoxication on the operation of the vehicle. *Davis v. State*, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

Allegations in an indictment of reckless driving and vehicular homicide through

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reckless driving, in violation of O.C.G.A. §§ 40-6-390(a) and 40-6-391(a)(1), were proven by evidence that the defendant drove 15 to 20 miles over the speed limit in the rain, weaving in and out of traffic, with a blood alcohol level of 0.135, ultimately crossing a median into oncoming traffic and killing a victim. *Prather v. State*, 303 Ga. App. 374, 693 S.E.2d 546 (2010).

Defendant's conviction for reckless driving was appropriate because the evidence was sufficient for the jury to have found beyond a reasonable doubt that the defendant was driving the defendant's truck in a manner exhibiting a reckless disregard for the safety of others under O.C.G.A. §§ 40-6-390(a) and 40-6-393(a). Although the defendant argued that there was no direct evidence of the manner of driving, and that the circumstantial evidence supported a separate hypothesis that the defendant had lost consciousness because of heat exhaustion and dehydration before the accident, the jury considered the testimony regarding that alternative theory and obviously rejected that theory. *Shy v. State*, 309 Ga. App. 274, 709 S.E.2d 869 (2011).

Evidence was sufficient to show that the defendant was driving a vehicle in a manner exhibiting a reckless disregard for the safety of others because the state trooper who stopped the defendant testified that the defendant was driving 32 miles per hour above the posted speed limit on a portion of the highway designated as a construction zone; in addition, the defendant was driving the vehicle late at night after having admittedly consumed alcohol. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Evidence that the defendant borrowed her sister's car, struck the rear of a slower moving car leading to the deaths of the driver and passenger, the defendant identified herself as her sister, and the defendant signed her sister's name on the Miranda form and on her written statement supported the defendant's convictions for first degree homicide by vehicle, forgery, reckless driving, and giving a false name. *Smith v. State*, 319 Ga. App.

164, 735 S.E.2d 153 (2012).

Relevant evidence to defendant's defense of accident. — In connection with defendant's conviction for reckless driving, causing serious bodily injury due to reckless driving, and other crimes, the trial court abused the court's discretion in granting the state's motion in limine to exclude the defendant's evidence of the design of the intersection where the accident occurred as such evidence was relevant to the defendant's defense of accident. *Dunagan v. State*, 283 Ga. 501, 661 S.E.2d 525 (2008).

Reckless driving is not lesser included offense of DUI. — Reckless driving was not a lesser included offense, as a matter of law or fact, of driving under the influence under O.C.G.A. § 16-1-6 as the facts in the indictment of the defendant were insufficient to support a reckless driving charge under O.C.G.A. § 40-6-390(a), and as a matter of law, the crimes were equally serious. *Shockley v. State*, 256 Ga. App. 892, 570 S.E.2d 67 (2002).

Informant's tip provided police with additional basis to observe and stop defendant. — Trial court did not err in denying the defendant's motion to suppress, despite a claim that an informant used to apprehend the defendant was not previously known to police and had never provided any information until helping in the prosecution of the defendant, because the informant's tip predicted some aspects of the defendant's future behavior and contained information not available to the general public that was corroborated by the observations of officers; moreover, the defendant's reckless driving and flight from a congested parking lot, which caused a short high-speed chase to ensue, and the fact that the police learned that the defendant often carried a gun, provided the officers with an additional basis to stop the defendant and make an arrest. *Patton v. State*, 287 Ga. App. 18, 650 S.E.2d 733 (2007).

Sentencing defendant on lesser offenses when sentenced on greater. — Trial court erred in sentencing the defendant on the lesser offenses of reckless driving and driving under the influence while the trial court also sentenced the

defendant on the greater offense of homicide by vehicle in the first degree, which included the lesser offenses. Had the jury revealed which of the lesser offenses served as the foundation for the homicide verdict a sentence on the remaining lesser offense might have been appropriate, but as such information did not appear in the record the defendant may not be sentenced for either of the lesser included offenses of violation of O.C.G.A. §§ 40-6-390 and 40-6-391. *McNabb v. State*, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

Evidence insufficient to authorize conviction. — Evidence that the defendant, upon finding the road blocked and seeing two men, not in uniform, come toward the defendant, endeavored to pass around the automobile blocking the road, which necessitated the defendant's driving partly into the ditch, that in so doing the defendant slightly damaged the car of the sheriff, which was blocking the road, when the defendant's automobile scraped against the left front fender and grill of the sheriff's car, and that the defendant did not stop, but continued on, was insufficient to authorize a conviction for leaving the scene of an accident or for reckless driving. *Worley v. State*, 87 Ga. App. 195, 73 S.E.2d 229 (1952).

Requiring restitution. — Trial court, after a conviction, is unauthorized to require restitution in the nature of damages to the prosecutor. *Lancaster v. State*, 83 Ga. App. 746, 64 S.E.2d 902 (1951).

Driving on wrong side of road. — Evidence showing that the defendant came over a hill around a curve, crossed over into the wrong lane, and stayed there until the defendant's car collided head-on with another was sufficient to support a finding that the defendant's conduct in driving on the wrong side of the road constituted reckless disregard for the safety of others. *Shadix v. State*, 179 Ga. App. 644, 347 S.E.2d 298 (1986).

Evidence of reckless driving supported vehicular homicide conviction. — Evidence that the defendant drove after the defendant admittedly consumed methadone, Xanax (alprazolam), and Percocet and that the defendant crossed over the center line of the road in

violation of O.C.G.A. § 40-6-40(a) and collided with another vehicle, killing the driver, was sufficient to show the defendant drove while impaired and drove recklessly under O.C.G.A. § 40-6-390(a), supporting the defendant's vehicular homicide conviction under O.C.G.A. § 40-6-393(a). *Wright v. State*, 304 Ga. App. 651, 697 S.E.2d 296 (2010).

Evidence of two prior speeding tickets and a failure to stop ticket was admissible in the defendant's trial for first degree vehicular homicide in violation of O.C.G.A. § 40-6-393 because the defendant contested recklessness, and the tickets were similar in nature to the defendant's reckless conduct and showed the defendant's bent of mind and course of conduct. *Taylor v. State*, 304 Ga. App. 573, 696 S.E.2d 498 (2010).

Merger into vehicular homicide. — Defendant's reckless driving, red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant's striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Merger not required for sentencing purposes. — Trial court's failure to merge the defendant's convictions for driving recklessly and committing second degree vehicular homicide, in violation of O.C.G.A. §§ 40-6-390 and 40-6-393, respectively, was not error for sentencing purposes as the reckless driving offense was not the underlying offense of the homicide, but rather, improper lane change was, in violation of O.C.G.A. § 40-6-123(a); further, pursuant to O.C.G.A. § 16-1-6, there was no factual merger because the crimes were committed sequentially and separately. *Cutter v. State*, 275 Ga. App. 888, 622 S.E.2d 96 (2005).

Although offenses related to the getaway car were part of the same criminal episode, the essential elements of armed robbery, theft by receiving, fleeing or at-

Application (Cont'd)

tempting to elude a police officer, and reckless driving were completely separate and distinct. As a result, the trial court did not err in failing to merge these offenses. *Garibay v. State*, 290 Ga. App. 385, 659 S.E.2d 775 (2008).

Jury Issues and Instruction

Jury instruction. — Injured party was not entitled to the injured party's request to a charge on O.C.G.A. § 40-6-390(a) for reckless driving because the charge was not a complete statement of the law as the charge did not define the specific conduct that constituted reckless disregard for the safety of persons or property or point to specific conduct that was reckless under the facts and circumstances of the case as was required under the statute. *Cox v. Allen*, 256 Ga. App. 53, 567 S.E.2d 363 (2002).

Requested charge on reckless driving as lesser included offense. — Defendant was entitled to a new trial on the charge of aggravated assault upon a police officer in violation of O.C.G.A. § 16-5-21 because the trial court should have given the defendant's requested charge on reckless driving in violation of O.C.G.A. § 40-6-390(a) as a lesser included offense since there was evidence that the defendant did not intend to injure a police officer but that the defendant's decision to drive off suddenly with the officer in close proximity to the defendant's truck was nonetheless an act of criminal negligence, which would have supported a conviction for reckless driving. *Young v. State*, 294 Ga. App. 227, 669 S.E.2d 407 (2008).

Contingent jury charges on first- and second-degree vehicular homicide upheld. — Trial court did not err in charging the jury on vehicular homicide, specifically explaining that if the jury found the defendant guilty of either DUI or reckless driving, and if the jury also found the defendant guilty of vehicular

homicide, it followed that the defendant had to be guilty of first-degree, and not second-degree, vehicular homicide. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Instruction on justification not authorized. — Trial court did not commit reversible error in failing to give, sua sponte, a jury charge on justification, because there was no evidence to support such a charge; contrary to the defendant's assertions in the defendant's brief, at no time did the defendant testify that the defendant accelerated to 103 mph because the defendant had no safer option. *Jones v. State*, 315 Ga. App. 688, 727 S.E.2d 512 (2012).

No charge required on defense of accident. — In a defendant's trial for reckless driving and driving under the influence of alcohol to the extent that it was less safe to drive, arising out of an incident in which the defendant's car spun out of control and struck another car, the trial court did not err in refusing to give a jury instruction on the defense of accident under O.C.G.A. § 16-2-2; the defendant was not entitled to a jury instruction on that affirmative defense because the defendant did not admit to driving recklessly or under the influence of alcohol to the extent that it was less safe to drive. *Rutland v. State*, 282 Ga. App. 728, 639 S.E.2d 628 (2006).

Trial court did not err by refusing to give the defendant's requested charge on misfortune or accident because the defendant, who was charged with driving under the influence, reckless driving, and failure to maintain lane, was not entitled to a charge that the accident was unavoidable; because the defendant did not admit to committing any act that constituted the offenses with which the defendant was charged, the defendant was not entitled to an instruction on accident. *Davis v. State*, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1547 et seq., 1572.

ALR. — What amounts to reckless driving within statute making reckless driv-

ing of automobile a criminal offense, 86 ALR 1273; 53 ALR2d 1337.

What conduct in driving an automobile amounts to wantonness, willfulness, or the like, precluding defense of contributory negligence, 119 ALR 654.

What constitutes "operation" or "negligence in operation" within statute making owner of motor vehicle liable for negligence in its operation, 13 ALR2d 378.

Criminal responsibility of motor vehicle operator for accident arising from physical defect, illness, drowsiness, or falling asleep, 63 ALR2d 983.

Custom or practice of drivers of motor vehicles as affecting question of negligence, 77 ALR2d 1327.

Liability for automobile accident allegedly caused by driver's blackout, sudden unconsciousness, or the like, 93 ALR3d 326.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 ALR4th 933.

Statute prohibiting reckless driving: definiteness and certainty, 52 ALR4th 1161.

40-6-391. Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child.

(a) A person shall not drive or be in actual physical control of any moving vehicle while:

(1) Under the influence of alcohol to the extent that it is less safe for the person to drive;

(2) Under the influence of any drug to the extent that it is less safe for the person to drive;

(3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;

(4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to drive;

(5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended; or

(6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

(b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section

unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor, upon a third conviction thereof, be guilty of a high and aggravated misdemeanor, and upon a fourth or subsequent conviction thereof, be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and shall be punished as follows:

(1) First conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$300.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not fewer than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not fewer than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; provided, however, that in the court's discretion such evaluation may be waived; and

(F) If the person is sentenced to a period of imprisonment for fewer than 12 months, a period of probation of 12 months less any days during which the person is actually incarcerated;

(2) For the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$600.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than 90 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 72 hours of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(3) For the third conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not fewer than 120 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 15 days of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(4) For the fourth or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than one year and not more than five years; provided, however, that the judge may suspend, stay, or probate all but 90 days of any term of imprisonment imposed under this paragraph. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose;

(C) Not fewer than 60 days of community service; provided, however, that if a defendant is sentenced to serve three years of

actual imprisonment, the judge may suspend the community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of five years less any days during which the person is actually imprisoned;

provided, however, that if the ten-year period of time as measured in this paragraph commenced prior to July 1, 2008, then such fourth or subsequent conviction shall be a misdemeanor of a high and aggravated nature and punished as provided in paragraph (3) of this subsection;

(5) If a person has been convicted of violating subsection (k) of this Code section premised on a refusal to submit to required testing or where such person's alcohol concentration at the time of the offense was 0.08 grams or more, and such person is subsequently convicted of violating subsection (a) of this Code section, such person shall be punished by applying the applicable level or grade of conviction specified in this subsection such that the previous conviction of violating subsection (k) of this Code section shall be considered a previous conviction of violating subsection (a) of this Code section;

(6) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere based on a violation of this Code section shall constitute a conviction; and

(7) For purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of this subsection, only those offenses for which a conviction is obtained or a plea of nolo contendere is accepted on or after July 1, 2008, shall be considered; provided, however, that nothing in this subsection shall be construed as limiting or modifying in any way administrative proceedings or sentence enhancement provisions under Georgia law, including, but not limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17.

(d)(1) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the misdemeanor or high and aggravated misdemeanor punishments provided for in this Code section upon a conviction of violating this Code section or upon a conviction of violating any ordinance adopting the provisions of this Code section.

(2) Notwithstanding any provision of this Code section to the contrary, any court authorized to hear misdemeanor or high and aggravated misdemeanor cases involving violations of this Code section shall be authorized to exercise the power to probate, suspend, or stay any sentence imposed. Such power shall, however, be limited to the conditions and limitations imposed by subsection (c) of this Code section.

(e) The foregoing limitations on punishment also shall apply when a defendant has been convicted of violating, by a single transaction, more than one of the four provisions of subsection (a) of this Code section.

(f) The provisions of Code Section 17-10-3, relating to general punishment for misdemeanors including traffic offenses, and the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, shall not apply to any person convicted of violating any provision of this Code section.

(g)(1) If the payment of the fine required under subsection (c) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under subsection (c) of this Code section conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

(h) For purposes of determining under this chapter prior convictions of or pleas of nolo contendere to violating this Code section, in addition to the offense prohibited by this Code section, a conviction of or plea of nolo contendere to any of the following offenses shall be deemed to be a violation of this Code section:

(1) Any federal law substantially conforming to or parallel with the offense covered under this Code section;

(2) Any local ordinance adopted pursuant to Article 14 of this chapter, which ordinance adopts the provisions of this Code section;
or

(3) Any previously or currently existing law of this or any other state, which law was or is substantially conforming to or parallel with this Code section.

(i) A person shall not drive or be in actual physical control of any moving commercial motor vehicle while there is 0.04 percent or more by weight of alcohol in such person's blood, breath, or urine. Every person convicted of violating this subsection shall be guilty of a misdemeanor and, in addition to any disqualification resulting under Article 7 of Chapter 5 of this title, the "Uniform Commercial Driver's License Act," shall be fined as provided in subsection (c) of this Code section.

(j)(1) The clerk of the court in which a person is convicted a second or subsequent time under subsection (c) of this Code section within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long and shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, the name of the convicted person, the city, county, and zip code of the convicted person's residential address, and the date, time, place of arrest, and disposition of the case and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed \$25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith.

(k)(1) A person under the age of 21 shall not drive or be in actual physical control of any moving vehicle while the person's alcohol concentration is 0.02 grams or more at any time within three hours after such driving or being in physical control from alcohol consumed before such driving or being in actual physical control ended.

(2) Every person convicted of violating this subsection shall be guilty of a misdemeanor for the first and second convictions and upon a third or subsequent conviction thereof be guilty of a high and aggravated misdemeanor and shall be punished and fined as provided in subsection (c) of this Code section, provided that any term of imprisonment served shall be subject to the provisions of Code Section 17-10-3.1, and any period of community service imposed on such person shall be required to be completed within 60 days of the date of sentencing.

(3) No plea of *nolo contendere* shall be accepted for any person under the age of 21 charged with a violation of this Code section.

(1) A person who violates this Code section while transporting in a motor vehicle a child under the age of 14 years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or drugs. The offense of endangering a child by driving under the influence of alcohol or drugs shall not be merged with the offense of driving under the influence of alcohol or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 47; Ga. L. 1968, p. 448, § 1; Code 1933, § 68A-902, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 1000, § 12; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 17; Ga. L. 1987, p. 3, § 40; Ga. L. 1987, p. 904, § 1; Ga. L. 1988, p. 1893, § 2; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1886, §§ 6-8; Ga. L. 1992, p. 2556, § 2; Ga. L. 1994, p. 1600, § 8; Ga. L. 1996, p. 1413, § 1; Ga. L. 1997, p. 760, § 23; Ga. L. 1999, p. 293, §§ 1, 2; Ga. L. 1999, p. 391, §§ 7, 8; Ga. L. 2001, p. 208, § 1-5; Ga. L. 2005, p. 334, § 18-15.1/HB 501; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2008, p. 498, §§ 2, 3, 4/HB 336; Ga. L. 2009, p. 8, § 40/SB 46; Ga. L. 2010, p. 422, § 1/HB 898; Ga. L. 2013, p. 294, § 4-48/HB 242; Ga. L. 2014, p. 710, §§ 1-19, 4-1/SB 298.)

The 2013 amendment, effective January 1, 2014, deleted “, relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child” following “Code Section 16-12-1” at the end of the last sentence of subsection (l). See editor’s note for applicability.

The 2014 amendment, effective July 1, 2014, in subparagraphs (c)(1)(D) through (c)(4)(D), added the language beginning with “within 120 days” and ending with “release from custody” at the end of the first sentence and substituted “Department of Driver Services’ certification”

for “department’s approval” in the second sentence.

Cross references. — Confinement of juvenile violators of subsection (k) of this Code section, § 15-11-35. Compensation of victims of violation of this Code section, § 15-21-110 et seq. Intoxication as relieving person from criminal responsibility for actions, § 16-3-4. Public drunkenness, § 16-11-41. Seizure and disposition of driver’s license of persons charged with driving under influence of alcohol or drugs, § 40-5-67. Notices of implied consent to chemical tests and rights of motor-

ists, § 40-5-67.1. Ignition interlock devices as probation condition, § 42-8-110 et seq. Navigating vessels while intoxicated, § 52-7-12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “this Code section” was substituted for “Code Section 40-6-391” in paragraph (c)(1) and in the first sentence of paragraph (d)(2).

Pursuant to Code Section 28-9-5, in 1987, “and” was deleted at the end of subparagraph (c)(2)(B) and “Code section” was substituted for “Code” in the first sentence of paragraph (d)(2).

Pursuant to Code Section 28-9-5, in 1990, “section” was inserted following “Code” the first time that word appears in the first sentence of paragraph (d)(2) due to its inadvertent omission from Ga. L. 1990, p. 2048, § 5.

Pursuant to Code Section 28-9-5, in 1991, “this chapter” was substituted for “Chapter 6 of Title 40” in paragraph (h)(2).

Pursuant to Code Section 28-9-5, in 1999, subparagraphs (c)(1)(D), (c)(2)(D), and (c)(3)(D) as enacted by Ga. L. 1999, p. 391, § 7, were redesignated as (c)(1)(E), (c)(2)(F), and (c)(3)(F), respectively, punctuation was revised accordingly, “paragraph” was substituted for “paragraphs” in paragraph (g)(2) and “name and address of the convicted person,” was substituted for “name, and address of the convicted person” in paragraph (j)(1).

Editor’s notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1996, p. 1413, § 2, not codified by the General Assembly, provides: “This Act shall become effective July 1, 1996, and shall apply with respect to offenses committed on or after that effective date. This Act shall not apply to or affect offenses committed prior to that effective date.”

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Teen-age and Adult Driver Responsibility Act.’”

Ga. L. 1997, p. 760, § 27, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 1999, p. 391, § 2, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as ‘Heidi’s Law.’”

Ga. L. 2008, p. 498, § 5/HB 336, not codified by the General Assembly, provides, in part, that the amendment to this Code section, by that Act, shall be applied to offenses occurring on or after July 1, 2008; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (c) of Code Section 40-6-391, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after July 1, 2008, shall be considered.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Law reviews. — For article, “Challenges to Humanitarian Legal Approaches

for Eliminating the Hazards of Drunk Alcoholic Drivers,” see 4 Ga. L. Rev. 251 (1970). For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997). For article, “The Harper Standard and the Alcosensor: The Road Not Traveled,” see 6 Ga. St. B.J. 8 (2000). For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005). For article, “No Second Chances: Immigration Consequences of Criminal Charges,” see 13 Ga. St. B.J. 26 (2007). For article, “The Experiential Future of the Law,” see 60 Emory L.J. 585 (2011).

For note discussing operation of Ga. L. 1968, p. 448 (see § 40-6-392) and constitutional issues raised by the concept, see 20 Mercer L. Rev. 489 (1969). For note on

1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992). For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992). For note, “Rodriguez v. State: Addressing Georgia’s Implied Consent Requirements for Non-English-Speaking Drivers,” see 54 Mercer L. Rev. 1253 (2003).

For comment on Harper v. State, 91 Ga. App. 456, 86 S.E.2d 7 (1955), holding that one is under the influence of alcohol when it appears that it is less safe for him to operate a motor vehicle than it would be if he were not so affected, see 18 Ga. B.J. 190 (1955). For comment on Flournoy v. State, 106 Ga. App. 756, 128 S.E.2d 528 (1962), see 14 Mercer L. Rev. 442 (1963).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

NOTICE

TESTING

EVIDENCE

INSTRUCTIONS TO JURY

ENDANGERING A CHILD

SENTENCE AND PUNISHMENT

General Consideration

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 1770(9), 1770(56), and former Code 1933, § 68-307 are included in the annotations.

Cases cited below referring to .12 percent blood alcohol level construe paragraph (a)(4) (now (a)(5)) as it existed prior to the 1988 amendment.

Section constitutional. — It is not an unreasonable restriction upon the right and use of private property, in violation of the due process clauses of the state and federal Constitutions, to make it unlawful for a person under the influence of intoxicating liquor to operate or drive a vehicle anywhere in the state. Cook v. State, 220 Ga. 463, 139 S.E.2d 383 (1964).

Constitutionality. — Former Code 1933, § 68A.902 was constitutional. Cargile v. State, 244 Ga. 871, 262 S.E.2d 87 (1979) (see O.C.G.A. § 40-6-391).

Paragraph (a)(4) (now (a)(5)) of

O.C.G.A. § 40-6-391 is not void for vagueness. Lester v. State, 253 Ga. 235, 320 S.E.2d 142 (1984); Scott v. Walker, 253 Ga. 695, 324 S.E.2d 187 (1985) (decided prior to 1988 amendment).

Inasmuch as it is clear what O.C.G.A. § 40-6-391 as a whole prohibits, the statute is not unconstitutionally vague. Steele v. State, 260 Ga. 835, 400 S.E.2d 1 (1991); Harris v. State, 199 Ga. App. 457, 405 S.E.2d 501 (1991).

O.C.G.A. § 40-6-391 is not unconstitutionally vague. King v. State, 200 Ga. App. 511, 408 S.E.2d 509 (1991).

Paragraph (a)(5) of O.C.G.A. § 40-6-391 does not constitute an improper exercise of the police power, is not void for vagueness, is not overbroad, and does not create a mandatory irrebuttable presumption that is unconstitutionally burden-shifting. Bohannon v. State, 269 Ga. 130, 497 S.E.2d 552 (1998).

Subsection (k) of O.C.G.A. § 40-6-391 does not violate the right to equal protection under the federal or state constitu-

tions. *Barnett v. State*, 270 Ga. 472, 510 S.E.2d 527 (1999).

Provision of paragraph (a)(6) of O.C.G.A. § 40-6-391 allowing a person with pharmaceutical marijuana in that person's body fluids to be convicted of driving with marijuana in that person's system only if it is established that the person was "rendered incapable of driving safely," while a person with metabolites of unprescribed marijuana can be found guilty of driving with marijuana in the person's system without evidence of impairment is an unconstitutional denial of equal protection. *Love v. State*, 271 Ga. 398, 517 S.E.2d 53 (1999).

Provision of paragraph (a)(6) of O.C.G.A. § 40-6-391 making it unlawful to drive while marijuana residue is circulating in the driver's body fluids bears a rational relationship to a legitimate state purpose, protection of the public, and does not violate equal protection. *Love v. State*, 271 Ga. 398, 517 S.E.2d 53 (1999).

"Less safe to drive" under paragraph (a)(2) of O.C.G.A. § 40-6-391 and "rendered incapable of driving safely" under paragraph (a)(6) of O.C.G.A. § 40-6-391 set the same standard of impairment necessary to establish that a driver was driving under the influence of alcohol or other intoxicating substance; thus, the statute did not violate the equal protection clauses of the United States and Georgia Constitutions. *State v. Kachwalla*, 274 Ga. 886, 561 S.E.2d 403 (2002).

As O.C.G.A. § 40-6-391(a)(5) provided more than adequate notice to a person of ordinary intelligence that driving with a alcohol concentration in excess of 0.08 grams was criminal conduct, O.C.G.A. § 40-6-391(a)(5) was not unconstitutionally vague, and defendant's driving under the influence conviction was affirmed. *Noble v. State*, 275 Ga. 635, 570 S.E.2d 296 (2002).

Trial court erred when the court concluded that O.C.G.A. § 40-6-391(a)(2) violated the equal protection clauses of the United States and Georgia constitutions because "less safe to drive," under O.C.G.A. § 40-6-391(a)(2), and "rendered incapable of driving safely," under O.C.G.A. § 40-6-391(b), set the same standard of impairment necessary to es-

tablish that a driver was driving under the influence of alcohol or other intoxicating substance; thus, there was no disparity in the treatment of those charged under O.C.G.A. § 40-6-391(a)(2) and those charged under O.C.G.A. § 40-6-391(b). *State v. Beck*, 275 Ga. 688, 572 S.E.2d 626 (2002).

Trial court erred in denying defendant's motion to suppress the results of a blood test as defendant was erroneously advised by a police officer that the implied consent statute was applicable due to the seriousness of the injuries sustained in the accident; although the officer's statement was correct at the time of the accident, the Georgia Supreme Court has since then ruled that O.C.G.A. § 40-5-55(a) was unconstitutional if defendant has not been arrested for a violation of O.C.G.A. § 40-6-391 at the time the consent to the blood test was given. *Buchanan v. State*, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

"Less safe" language surplusage. — Language referring to driving under the influence "under age 21" in a count charging the defendant with violating O.C.G.A. § 40-6-391(a)(1) by driving under the influence of alcohol to the extent that it was less safe to drive was surplusage; the language did not render the accusation void because the remaining language accurately described a violation of § 40-6-391(a)(1). *Striplin v. State*, 284 Ga. App. 92, 643 S.E.2d 361 (2007).

Reckless driving charges not affected by unconstitutionality of paragraph (a)(6). — Fact that O.C.G.A. § 40-6-391(a)(6) was held unconstitutional as a denial of equal protection did not apply to require dismissal of charges against the defendant that the defendant committed reckless driving in violation of O.C.G.A. § 40-6-390(a) and first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a) by reckless driving; the charges merely included the fact that marijuana was found in the defendant's blood because it was relevant to a determination that the defendant drove "in reckless disregard for the safety of persons or property." *Ayers v. State*, 272 Ga. 733, 534 S.E.2d 76 (2000).

Crimes that are malum prohibitum. — Defendant's claim that the defendant

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could not form the criminal intent to commit the crimes of driving while under the influence per se and reckless driving because the defendant was involuntarily intoxicated at the time of the offenses had to be rejected as those types of crimes were included under a section of the law that described crimes that were "malum prohibitum," the criminal element of which was simply the intention to do the act which resulted in a violation of the law, and not the intent to commit the crime itself. Since the evidence showed that the defendant intended to commit the acts which resulted in the offenses, the fact that the defendant could not form the requisite intent to commit the specific crimes was immaterial. *Crossley v. State*, 261 Ga. App. 250, 582 S.E.2d 204 (2003).

Due process was not violated by the failure to return the defendant's plastic license following a license suspension hearing which was resolved in the defendant's favor since the rationale for confiscation of the license in the first place was a pending charge under this O.C.G.A. § 40-6-391. *Wright v. State*, 228 Ga. App. 717, 492 S.E.2d 581 (1997).

Trial court properly denied the defendant's amended motion for a new trial, holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I, given that: (1) the claim was raised for the first time in the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when the department promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. *Palmaka v. State*, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

Standard is "any drug." — Accusation brought pursuant to O.C.G.A. § 40-6-391(a)(2) is not insufficient if it

fails to name a particular drug; in fact, that provision makes it unlawful to drive while under the influence of any drug. *Buchanan v. State*, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

Definition of marijuana under statute. — Definition of "marijuana" under the Motor Vehicles Act, O.C.G.A. § 40-6-391 et seq., not only includes THC for purposes of determining whether one is driving under the influence, but requires that THC be considered "marijuana" in order for paragraph (a)(6) of O.C.G.A. § 40-6-391 to be actionable since THC in the blood or urine is the method by which the presence of marijuana is detected for purposes of determining whether one is driving under the influence thereof. *Cronan v. State*, 236 Ga. App. 374, 511 S.E.2d 899 (1999).

Suspension of license not prosecution for double jeopardy purposes. — Suspension of a driver's license at an administrative hearing was not punishment, nor was the hearing a prosecution for the purposes of double jeopardy; thus, a subsequent criminal prosecution for driving under the influence was not barred. *Nolen v. State*, 218 Ga. App. 819, 463 S.E.2d 504 (1995), cert. denied, 518 U.S. 1018, 116 S. Ct. 2550, 135 L. Ed. 2d 1070 (1996); *McDaniel v. State*, 224 Ga. App. 5, 479 S.E.2d 779 (1996).

Payment of the fee required for reinstatement of a driver's license after the license was suspended following an arrest for driving under the influence was not punishment and did not bar a subsequent prosecution for driving under the influence. *Thompson v. State*, 229 Ga. App. 526, 494 S.E.2d 306 (1997); *Morgan v. State*, 229 Ga. App. 861, 495 S.E.2d 138 (1998).

O.C.G.A. § 40-6-391(a)(2) provides adequate notice that a person who ingests marijuana or any other drug specified in that section and then drives a motor vehicle does so at his or her own peril of violating these provisions. *Kevinezz v. State*, 265 Ga. 78, 454 S.E.2d 441 (1995).

Operator under influence to extent vehicle's operation less safe. — "Under the influence" means more than having consumed the smallest amount of alcohol

possible to imagine. The operator of a motor vehicle must be under the influence of an intoxicant to the extent that it is less safe for the operator to operate a motor vehicle than if the operator were not so affected. *Anderson v. State*, 226 Ga. 35, 172 S.E.2d 424 (1970) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Trial court did not err in denying the defendant's motion to quash the uniform traffic citation filed against the defendant even though the citation did not specify whether the defendant was being charged with DUI under O.C.G.A. § 40-6-391(a)(1), known as "less safe DUI" or under O.C.G.A. § 40-6-391(a)(5), known as "per se DUI" since those provisions were not separate offenses but were merely alternative ways to prove the offense of DUI; however, the trial court did violate the defendant's procedural due process rights to present evidence when the trial court told the state to stick to proving "per se DUI" because the trial court indicated to the defendant that it was not going to require the defendant to defend against a "less safe DUI" charge even though the trial court later clarified that the resulting conviction was for "less safe DUI." *Rigdon v. State*, 270 Ga. App. 217, 605 S.E.2d 903 (2004).

Testimony of deputies who observed a defendant driving erratically and a paramedic who examined the defendant at the stop scene to the effect that the defendant was under the influence of alcohol to the extent that the defendant was a less safe driver, along with blood alcohol evidence, was sufficient for the jury to find beyond a reasonable doubt that the defendant was guilty of driving under the influence of alcohol to the extent that the defendant was a less safe driver, and of failing to safely maintain the vehicle within a marked traffic lane in violation of O.C.G.A. §§ 40-6-48(1) and 40-6-391(a)(1). *Stubblefield v. State*, 302 Ga. App. 499, 690 S.E.2d 892 (2010).

No intent to repeal criminal sanctions. — Legislature, in amending O.C.G.A. § 40-6-391 in 1988, did not intend to repeal the criminal sanctions for driving under the influence of alcohol. *Proo v. State*, 192 Ga. App. 169, 384 S.E.2d 197 (1989), cert. denied, 493 U.S. 1071,

110 S. Ct. 1115, 107 L. Ed. 2d 1022 (1990); *Proveaux v. State*, 198 Ga. App. 119, 401 S.E.2d 12 (1990).

Legislative intent. — O.C.G.A. § 40-6-391(b) is clear enough to discern the legislature's intention, which was not, as appellant argues, to allow anyone who has ever legally used a drug to be exempt from the prohibitions of O.C.G.A. § 40-6-391(a). *Burks v. State*, 195 Ga. App. 516, 394 S.E.2d 136 (1990).

City ordinance attempting to make penal state offense of DWI. — To apply a city ordinance attempting to make penal the state offense of driving while intoxicated, would, equally, result in an illegal conviction, as infringing upon the state law governing that subject. In either event, a conviction under the ordinance upon such a state of facts would be void and could not be pleaded in abatement against an accusation in the state court for violating the state law. *Smith v. State*, 88 Ga. App. 749, 77 S.E.2d 764 (1953) (decided under prior Code 1933, § 68-307).

Offense separate and distinct from public drunkenness. — Offense of operating vehicle while under the influence is separate and distinct from public drunkenness in that each requires for conviction ingredients not essential to the other, and is separate and distinct from the offense of public drunkenness contained in a city ordinance. Accordingly, a conviction of violation of an ordinance relating to being drunk on the street is no bar to a prosecution in the criminal court of a county for the offense of operating a motor vehicle while under the influence of intoxicants. *Smith v. State*, 88 Ga. App. 749, 77 S.E.2d 764 (1953) (decided under prior Code 1933, § 68-307).

Vehicle registration numbers are not element of offense. — Fact that defendant's DUI citation did not state the tag or registration numbers of the vehicle defendant was driving when arrested was irrelevant to the issue of whether defendant was driving under the influence since that information forms no part of the elements of the offense. *Uren v. State*, 174 Ga. App. 804, 331 S.E.2d 642 (1985).

Indictment may stand upon former Code 1910, § 1770, making it a misde-

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meanor for one to operate an automobile over the public streets or roads while intoxicated, which was not repealed by the similar unconstitutional 1915 provision. *Jones v. State*, 151 Ga. 502, 107 S.E. 765 (1921); *McDonald v. State*, 152 Ga. 223, 109 S.E. 656 (1921) (decided under former Code 1910, § 1770(9)).

Indictment charging defendant in language of section. — When the indictment charged the defendant with the offense of operating a motor vehicle under the influence of intoxicating liquor substantially in the language of Ga. L. 1953, p. 556, it was not subject to the ground of demurrer (now motion to dismiss) attacking it because it failed to allege that the defendant's driving was affected in any manner by the use of the intoxicating liquors and drugs, and because it failed to allege that the defendant's intoxication made it less safe for the defendant to operate the motor vehicle at the time and place. *Hooks v. State*, 97 Ga. App. 897, 104 S.E.2d 623 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 566).

Variation in accusation and citation irrelevant. — Fact that an accusation issued for violation of O.C.G.A. § 40-6-391 is in fact couched in broader language than the uniform traffic citations originally issued establishes no ground for the dismissal of the accusation. *Manning v. State*, 175 Ga. App. 738, 334 S.E.2d 338 (1985).

Issuance of a formal accusation after the defendant's arrest, specifying alternative methods by which the defendant violated O.C.G.A. § 40-6-391, did not amend the uniform traffic citation, but superseded the citation as the charging instrument. *Ellerbee v. State*, 215 Ga. App. 102, 449 S.E.2d 874 (1994).

Inconsistent verdict could not form basis for attacking DUI conviction. — Fact that the jury found the defendant not guilty of a charge of failing to maintain a lane could not be a basis for attacking the guilty verdict for driving under the influence of alcohol under O.C.G.A. § 40-6-391(a)(1). *Renkiewicz v. State*, 283 Ga. App. 692, 642 S.E.2d 384 (2007).

Conviction not affected by use of old citation form. — Validity of defen-

dant's conviction for driving under the influence was not affected by the fact that the uniform traffic citation issued to the defendant was not the form then in use, since the citation showed on the citation's face that the citation had been approved by the Commissioner of Public Safety as required by O.C.G.A. § 40-13-1. *Hudson v. State*, 261 Ga. 414, 405 S.E.2d 495 (1991).

Variation in accusation and statutory language. — Accusation charging driving under the influence and reciting the proper statute, but omitting "less safe driver" language in O.C.G.A. § 40-6-391, was sufficient. *Broski v. State*, 196 Ga. App. 116, 395 S.E.2d 317 (1990).

Accusation that omitted certain statutory language but that apprised the defendant that the defendant was being charged with driving with an unlawful alcohol concentration of 0.10 grams or more within three hours of operating a vehicle was sufficient. *Lewis v. State*, 215 Ga. App. 486, 451 S.E.2d 116 (1994).

O.C.G.A. § 40-6-391 establishes only one crime, driving under the influence; subsections (a)(1) and (a)(4) of O.C.G.A. § 40-6-391 merely set out two different methods of proving that crime. *Kuptz v. State*, 179 Ga. App. 150, 345 S.E.2d 670 (1986); *Scott v. State*, 207 Ga. App. 533, 428 S.E.2d 359 (1993).

While it is impermissible to join distinct offenses in a single count of an indictment or accusation, it is also well settled that subsection (a) of O.C.G.A. § 40-6-391 establishes a single crime of driving while in a prohibited condition and that paragraphs (a)(1) and (a)(4) (now (a)(5)) merely define different modes of committing that one crime; a charging instrument is not subject to the objection of duplicity or multifariousness where, as here, alternative methods of violating the one criminal statute at subsection (a) are alleged in a single count. *Morgan v. State*, 212 Ga. App. 394, 442 S.E.2d 257 (1994); *Hankins v. City of Alpharetta*, 217 Ga. App. 635, 458 S.E.2d 858 (1995).

Defect in one count when the defendant was charged with two alternative counts of driving under the influence arising from the same conduct did not affect the other charge. *Smith v. State*, 239 Ga. App. 515, 521 S.E.2d 450 (1999).

Reference to multiple subsections acceptable. — Trial court did not err in denying the defendant's motion to quash the uniform traffic citation filed against the defendant and alleging the defendant violated a DUI statute as the uniform traffic citation did not allege more than one offense against the defendant; the citation's reference to multiple subsections involved the different ways that the state could prove the offense and were not allegations that multiple offenses were committed. *Slinkard v. State*, 259 Ga. App. 755, 577 S.E.2d 825 (2003).

Violation of O.C.G.A. § 40-6-391 was a crime for purposes of the application of a life insurance policy exclusion from the payment of benefits "for any loss caused directly or indirectly, wholly or partly, by: ... committing, or attempting to commit a crime." *Barnes v. Greater Ga. Life Ins. Co.*, 243 Ga. App. 149, 530 S.E.2d 748 (2000).

Violation serves as statutory predicate. — Trial court did not err in denying the defendant's motion in arrest of judgment that attacked the validity of the defendant's indictment for first-degree homicide by vehicle as the allegation in the indictment that the defendant violated O.C.G.A. § 40-6-391(k)(1) could serve as the statutory predicate for the charged offense of first-degree vehicular homicide since the evidence showed that the defendant was under 21-years-old and was driving the defendant's vehicle with a blood alcohol level measured at .08 grams after the accident, and, thus, the state showed that the statutory predicate offense applied. *David v. State*, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Defendant's contention that violation of O.C.G.A. § 40-6-391 was not intended by the legislature to serve as a statutory predicate for vehicular homicide because enactment of the vehicular homicide statute predated enactment of O.C.G.A. § 40-6-391 had to be rejected; when the legislature enacted O.C.G.A. § 40-6-391, it was presumed to do so with knowledge of the existing provisions of the vehicular homicide statute and with reference to it. *David v. State*, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Paragraph (a)(1) does not require commission of unsafe act. — Para-

graph (a)(1) of O.C.G.A. § 40-6-391 makes it unlawful for a person to drive or be in actual physical control of any moving vehicle while under the influence of alcohol to the extent that it is "less safe for the person to drive" There is no requirement that the person actually commit an unsafe act. *Moss v. State*, 194 Ga. App. 181, 390 S.E.2d 268 (1990); *State v. Smith*, 196 Ga. App. 876, 397 S.E.2d 304 (1990); *Shannon v. State*, 205 Ga. App. 831, 424 S.E.2d 51, cert. denied, 205 Ga. App. 901, 424 S.E.2d 51 (1992); *Shelton v. State*, 214 Ga. App. 166, 447 S.E.2d 115 (1994); *Anthony v. State*, 211 Ga. App. 622, 441 S.E.2d 70 (1993), overruled on other grounds, *State v. Coleman*, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Citation adequate under paragraph (a)(1) not paragraph (a)(4). — Traffic citation which charged the defendant with "D.U.I in violation of Code Section 40-6-391" was adequate for prosecution under the less safe standard of paragraph (a)(1) of O.C.G.A. § 40-6-391 but was inadequate to prosecute under paragraph (a)(4) of O.C.G.A. § 40-6-391. *Power v. State*, 231 Ga. App. 335, 499 S.E.2d 357 (1998).

Paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 creates no presumption of intoxication, but merely proscribes certain conduct. *Cunningham v. State*, 255 Ga. 35, 334 S.E.2d 656 (1985); *Mosley v. State*, 185 Ga. App. 610, 365 S.E.2d 451 (1988); *Koulouanos v. State*, 192 Ga. App. 90, 383 S.E.2d 642 (1989).

Paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 defines a specific act as criminal rather than raising a presumption of intoxication. *Hudgins v. State*, 176 Ga. App. 719, 337 S.E.2d 378 (1985).

In an accusation charging a violation of paragraph (a)(5) of O.C.G.A. § 40-6-391, use of the words "alcohol concentration" did not import into the accusation an unnecessarily minute description of a necessary fact. *Mitchell v. State*, 269 Ga. 378, 497 S.E.2d 566 (1998).

Use of presumptions established by § 40-6-392. — Presumption of sobriety contained in O.C.G.A. § 40-6-392(b)(1) is irrelevant when the ultimate issue before the jury is the defendant's impaired abil-

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ity to drive as the result of being under the influence of a drug. *Perano v. State*, 167 Ga. App. 560, 307 S.E.2d 64 (1983).

Commission of the crime of driving under the influence (DUI) by violating paragraph (a)(1), (a)(2), or (a)(3) of O.C.G.A. § 40-6-391 may include as an element of proof thereof, those presumptions or inferences which are established by paragraph (b)(1), (b)(2), or (b)(3) (now paragraph (b)(1) or (b)(2)) of O.C.G.A. § 40-6-392. The crime of DUI by violating paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 differs only in that proof merely of the commission of a proscribed specific act is sufficient without resort to any inference or presumption. *Hogan v. State*, 178 Ga. App. 534, 343 S.E.2d 770 (1986).

Criminal defendant was not entitled to jury instructions based on the presumptions in O.C.G.A. § 40-6-392 when the where defendant was on trial for vehicular homicide, and evidence of the defendant's blood-alcohol level was not admitted to show that the defendant was driving under the influence but was admitted as a circumstance of the defendant's arrest for vehicular homicide through reckless driving. *Collum v. State*, 195 Ga. App. 42, 392 S.E.2d 301 (1990).

Trial court did not err by failing to give the jury the defendant's requested instruction on the statutory presumption of sobriety as set forth in O.C.G.A. § 40-6-392(b)(1) because the defendant's request was predicated upon the driving under the influence (DUI) less safe count of the indictment, of which the jury found the defendant not guilty; O.C.G.A. § 40-6-392(b)(1) applied only to DUI less safe violations and did not entitle the defendant to a presumption of sobriety with respect to the defendant's reckless driving violation. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Impaired driving ability is element. — Under paragraph (a)(2) of O.C.G.A. § 40-6-391, impaired driving ability is an element of the crime that the state must prove to obtain a conviction. *Kevinezz v. State*, 265 Ga. 78, 454 S.E.2d 441 (1995).

Impaired driving ability not element under paragraph (a)(4) (now

(a)(5)). — Impaired driving ability is not a fact necessary to constitute the crime established in paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391. *Lester v. State*, 253 Ga. 235, 320 S.E.2d 142 (1984).

Impaired driving ability is not an element of the offense of driving under the influence of marijuana or a controlled substance under paragraph (a)(5) (now (a)(6)) of O.C.G.A. § 40-6-391. *Ryals v. State*, 215 Ga. App. 51, 449 S.E.2d 865 (1994).

Same physical condition. — Phrase "driving under the influence," with respect to both alcohol and drugs, and the phrase "to the extent it is less safe for the person to drive" are not two separate elements; but are equivalent concepts describing the same physical condition. *Kevinezz v. State*, 265 Ga. 78, 454 S.E.2d 441 (1995).

Double jeopardy. — Because the trial court's grant of a new trial stemmed from trial error, the defendant could not be retried on an offense of per se DUI, given that the defendant was adjudged not guilty of that charge based upon the insufficiency of the evidence; thus, the trial court erred in denying the plea in bar. *Shah v. State*, 288 Ga. App. 788, 655 S.E.2d 347 (2007).

Multiple convictions based upon same incident. — Since a defendant cannot be convicted of more than one offense if the offenses are the same in law and fact, a defendant cannot be convicted of both driving under the influence and driving with a blood alcohol level of at least .12% when both convictions are based on the same incident of driving under the influence. *Sanders v. State*, 176 Ga. App. 869, 338 S.E.2d 5 (1985).

When a defendant was convicted of driving under the influence (DUI), in violation of paragraph (a)(1) of O.C.G.A. § 40-6-391, and driving with a blood-alcohol concentration in excess of .12 grams, in violation of paragraph (a)(4) (now (a)(5)), the court was not authorized to enter convictions on both DUI charges since the convictions were predicated on the same conduct. *Love v. State*, 195 Ga. App. 392, 393 S.E.2d 520 (1990).

Defendant's convictions for operating a motor vehicle under the influence of alcohol while having a probationary license

and driving under the influence of alcohol could not both stand since, under the facts, the latter was a lesser included offense in the violation of the probationary license offense. *Williams v. State*, 223 Ga. App. 209, 477 S.E.2d 367 (1996).

Defendant could be convicted on both felony possession of methamphetamine and driving under the influence of methamphetamine, a misdemeanor; there is no basis for dismissing a felony based on a misdemeanor conviction at common law, and such a result would defy common sense. *Helmeci v. State*, 230 Ga. App. 866, 498 S.E.2d 326 (1998).

Under the plain language of O.C.G.A. § 40-5-63(a), because the underlying DUI convictions pursuant to O.C.G.A. § 40-6-391 did not have to result from separate arrests or separate and isolated incidents, the Department of Driver Services could suspend a driver's license based upon two separate DUI convictions resulting from a single incident. *Dozier v. Jackson*, 282 Ga. App. 264, 638 S.E.2d 337 (2006).

Separate offenses. — Defendant's prosecution for driving under the influence and driving with .12% alcohol level did not result in the defendant's being placed in jeopardy twice for the same offense; the two offenses are separate crimes and upon conviction for the latter, the defendant could not also be convicted for the former. *Hadden v. State*, 180 Ga. App. 496, 349 S.E.2d 770 (1986).

Defendant's acquittal on a charge of driving under the influence on August 6, 1987, did not bar a subsequent prosecution for driving under the influence on November 2, 1987, where neither of the accusations stated that the date of the alleged offenses was a material averment and the state could prove their commission at any time within the two-year statute of limitations. *Sandner v. State*, 193 Ga. App. 62, 387 S.E.2d 27 (1989).

Simple battery charge did not "arise from the same conduct" as a driving under the influence (DUI) charge, so as to come within the prohibition of the multiple prosecution bar, since the battery occurred 40 minutes after the defendant's arrest for DUI and at a different location, the officer who made the DUI arrest was

not the same person allegedly struck by the defendant, and the DUI involved the defendant's operation of a motor vehicle, but the battery did not. *State v. Littler*, 201 Ga. App. 527, 411 S.E.2d 522 (1991).

Lesser included offense. — DUI accusation must allege harm or danger in order to render reckless conduct a lesser included offense. *Barber v. State*, 204 Ga. App. 94, 418 S.E.2d 436 (1992).

Improper lane change, driving without headlights, and driving under the influence of alcohol (DUI) convictions did not merge because the facts alleged in the accusation with regard to the DUI charge were not also sufficient to establish the lesser offenses of improper lane change and driving without headlights. *Parker v. State*, 249 Ga. App. 530, 549 S.E.2d 154 (2001).

Public drunkenness is not, as matter of fact or law, a lesser included offense of driving under the influence of alcohol to the extent it is less safe to drive. *State v. Tweedell*, 209 Ga. App. 13, 432 S.E.2d 619 (1993).

When person is under the influence. — Person is under the influence of intoxicating liquor when it appears that it is less safe for such person to operate a motor vehicle than it would be if the person were not so affected. *Cargile v. State*, 244 Ga. 871, 262 S.E.2d 87 (1979).

Trial court does not err in charging the jury that the jury is authorized to find a driver guilty if the jury finds the driver operated a motor vehicle while under the influence of alcohol to the extent that the driver was a "less safe driver," instead of charging that the use of alcohol must have rendered the driver "incapable of safely driving." *Jones v. State*, 168 Ga. App. 106, 308 S.E.2d 209 (1983).

Separate sentences for per se and less safe DUI. — Imposing separate sentences for both driving under the influence per se, O.C.G.A. § 40-6-391(a)(5), and driving under the influence less safe, O.C.G.A. § 40-6-391(a)(1), was improper, and since the conviction based on O.C.G.A. § 40-6-391(a)(5) posed the more serious risk of injury to property or the public, that conviction was affirmed; a conviction under O.C.G.A. § 40-6-391(a)(5) did not require proof of

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impaired driving ability, so even if the results of the field sobriety tests should have been excluded, it was highly probable that the error did not contribute to the judgment since the breath test results, which were not challenged on appeal, provided sufficient proof of the per se violation, and, thus, any error in denying the defendant's motion to suppress the results of the field sobriety tests was harmless. *Partridge v. State*, 266 Ga. App. 305, 596 S.E.2d 778 (2004).

Alcohol concentration 0.10 grams or more within three hours after driving. — Paragraph (a)(5) of O.C.G.A. § 40-6-391 declaring a person per se DUI if an individual's alcohol concentration is 0.10 grams or more at any time within three hours after driving does not require that the person be tested within three hours; it need be established only that the individual's alcohol concentration was 0.10 grams or greater during the three-hour period after the individual ceased driving. *Yarbrough v. State*, 241 Ga. App. 777, 527 S.E.2d 628 (2000).

When operator under influence. — An operator of a motor vehicle on the public highway of this state is under the influence of intoxicating liquor when the operator is so affected by intoxicating liquor as to make it less safe for the operator to operate such a vehicle than it would be if the operator was not affected by such intoxicating liquor. *Sims v. State*, 92 Ga. App. 169, 88 S.E.2d 186 (1955) (decided under former Code 1933, § 68-307).

Degree of driver incapacity required for conviction. — It is not necessary that the defendant be so under the influence as to be incapable of driving. It is necessary only that the defendant be under the influence to a degree which renders the defendant less safe or incapable of driving safely. *Howell v. State*, 179 Ga. App. 632, 347 S.E.2d 358 (1986).

Presence of alcohol in defendant's body does not, by itself, support inference that the defendant's driving was impaired. — To win a conviction for driving under the influence under O.C.G.A. § 40-6-391(a)(1), the "less safe driver" statute, the state must prove that the

defendant had impaired driving ability as a result of drinking alcohol; impaired driving ability depends solely upon an individual's response to alcohol and because individual responses to alcohol vary, the presence of alcohol in a defendant's body, by itself, does not support an inference that the defendant was an impaired driver. *Baird v. State*, 260 Ga. App. 661, 580 S.E.2d 650 (2003).

Probable cause needed to conduct an arrest for DUI requires that the officer have knowledge or reasonably trustworthy information that a suspect was actually in physical control of a moving vehicle, while under the influence of alcohol to a degree which renders the suspect incapable of driving safely; mere presence of alcohol is not the issue because in a less safe case, the state must prove that the defendant had impaired driving ability as a result of drinking alcohol and it is not necessary for an officer to give the officer's opinion or state specifically that a defendant was a less safe driver. *State v. Sanders*, 274 Ga. App. 393, 617 S.E.2d 633 (2005).

Mere occupation of parked automobile while under the influence of alcohol is not a crime. *Ferguson v. City of Doraville*, 186 Ga. App. 430, 367 S.E.2d 551 (1988), overruled on other grounds, *Vogtle v. Coleman*, 259 Ga. 115, 376 S.E.2d 861 (1989).

Operating vehicle for only few yards while intoxicated. — It would make no difference to one charged with operating an automobile over a public highway of this state while under the influence of intoxicating liquor that one had just gotten behind the wheel of the car and had gone only a few yards when one was stopped by the officers and arrested. Such an act would come within the meaning of the word "operation," prohibiting the above offense. *Austin v. State*, 47 Ga. App. 191, 170 S.E. 86 (1933), overruled on other grounds, *Harper v. State*, 91 Ga. App. 456, 86 S.E.2d 7 (1955) (decided under former Code 1933, § 68-307).

Person under influence steering pushed or towed vehicle. — One who, while under the influence of intoxicants, steers a vehicle which is unable to move under the vehicle's own power, while being pushed or towed, violates Ga. L. 1953, p.

556 (see O.C.G.A. § 40-6-391). *Harris v. State*, 97 Ga. App. 495, 103 S.E.2d 443 (1958), overruled on other grounds, *New v. State*, 171 Ga. App. 392, 319 S.E.2d 542 (1984) and *Luke v. State*, 177 Ga. App. 518, 340 S.E.2d 30 (1986) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Steering towed vehicle sufficient for conviction. — Defendant could be convicted of driving under the influence of alcohol even though the vehicle the defendant was steering was being towed. *Bridgers v. State*, 213 Ga. App. 157, 444 S.E.2d 330 (1994).

Public versus private road. — O.C.G.A. § 40-6-391(a)(5) provided that it was unlawful for any person to drive or be in actual physical control of any moving vehicle with a blood alcohol level of 0.08 or more and drew no distinction between driving on public roads versus private thoroughfares; thus the defendant had no immunity from prosecution for driving under the influence because the act was committed on private property. *Madden v. State*, 252 Ga. App. 164, 555 S.E.2d 832 (2001).

Roadblocks used to identify licenses, insurances, and sobriety. — When the defendant was convicted of less-safe DUI under O.C.G.A. § 40-6-391, the trial court did not err in denying the defendant's motion to suppress the results of breath and blood tests because the daylight roadblock was well-identified as a police checkpoint for the stated and authorized purpose of checking driver's licenses, insurance, and driver sobriety. *Clark v. State*, 318 Ga. App. 873, 734 S.E.2d 839 (2012).

Pedestrian under the influence. — As a matter of fact or of law, the offense of being a pedestrian under the influence is not a lesser included offense of the offense of driving under the influence. *Dickson v. State*, 167 Ga. App. 685, 307 S.E.2d 267 (1983).

Defendant charged with permitting an intoxicated driver to drive could not be convicted unless it was proved that the driver violated O.C.G.A. § 40-6-391 governing driving under the influence; thus, the prosecution was a "criminal action ... arising out of acts" in alleged violation of that section and admissibility

of the results of an intoximeter test given to the driver would be governed by O.C.G.A. § 40-6-392. *Munda v. State*, 172 Ga. App. 857, 324 S.E.2d 799 (1984).

When source of alcohol was prescription drug. — When the defendant contended that the defendant's conviction could not stand, relying upon the state's failure to rebut the defendant's contention that prior to the time of the defendant's arrest, the defendant had been taking a prescription drug, the major component of which was alcohol, it was found that a rational trier of fact could reasonably have found from the evidence adduced at trial enough proof of the defendant's guilt beyond a reasonable doubt. *Kimberly v. State*, 180 Ga. App. 521, 349 S.E.2d 489 (1986).

Conviction proper though found "not unsafe." — O.C.G.A. § 40-6-391 simply requires a finding that a person was a less safe driver than the person would have been if the person were not under the influence of alcohol, and a jury could and did properly find that the defendant's driving, although not unsafe, violated O.C.G.A. § 40-6-391. *Jones v. State*, 207 Ga. App. 469, 428 S.E.2d 402 (1993).

Involuntary manslaughter proven. — One who, while violating this section, drives so dangerously or recklessly that, as a result of that person's intoxication, the person unintentionally kills another human being is guilty of involuntary manslaughter in the commission of an unlawful act. *French v. State*, 99 Ga. App. 149, 107 S.E.2d 890 (1959) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Lesser included offense of vehicular homicide. — Offense of driving under the influence was a lesser included offense of first degree vehicular homicide and conviction of both offenses was proscribed. *Duncan v. State*, 183 Ga. App. 368, 358 S.E.2d 910 (1987).

Reckless conduct. — Since reckless conduct requires harm or danger to "another person," an element not required by O.C.G.A. § 40-6-391 to be alleged and proven, it is not a lesser included offense of driving under the influence as a matter of law. *Whiteley v. State*, 188 Ga. App. 129, 372 S.E.2d 296 (1988), cert. denied, 188 Ga. App. 913, 372 S.E.2d 296 (1988);

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Cooney v. State, 205 Ga. App. 385, 422 S.E.2d 286 (1992).

Reckless conduct was not a lesser included crime of driving under the influence as a matter of fact since the accusation included no allegation of harm or danger to another person and there was no proof of such at trial. Whiteley v. State, 188 Ga. App. 129, 372 S.E.2d 296 (1988), cert. denied, 188 Ga. App. 913, 372 S.E.2d 296 (1988); Cooney v. State, 205 Ga. App. 385, 422 S.E.2d 286 (1992).

Arrest as prerequisite. — O.C.G.A. § 40-5-55(a), as the statute now stands, provides that consent is implied only if a person is arrested for a violation of O.C.G.A. § 40-6-391. Buchanan v. State, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

Warrantless arrest. — When obtaining a warrant to arrest the defendant for driving under the influence would have required at least two hours, during which time physical evidence of the defendant's alleged intoxication would dissipate, the warrantless arrest was proper under subsection (a) of O.C.G.A. § 40-6-391. State v. Fleming, 202 Ga. App. 774, 415 S.E.2d 513 (1992).

Obligation not to leave accident scene. — Defendant's conviction for a per se driving under the influence violation was upheld on appeal and no unlawful seizure of the defendant occurred at the collision scene the defendant caused since the defendant was obligated not to leave the scene of the accident regardless of whether an officer told the defendant not to leave. Stadnisky v. State, 285 Ga. App. 33, 645 S.E.2d 545 (2007).

Probable cause for arrest. — As to the question of whether the arrest of a defendant for the offense of driving under the influence is made with probable cause, the question is whether the officer at the time of the defendant's arrest has knowledge or reasonably trustworthy information that: (1) the defendant was in actual physical control of a moving vehicle; (2) while under the influence of any drug; (3) to a degree which renders the defendant incapable of driving safely. Griggs v. State, 167 Ga. App. 581, 307 S.E.2d 75 (1983).

There was probable cause to arrest the

defendant for a violation of O.C.G.A. § 40-6-391(a) when the officer's initial approach was a first level police-citizen encounter and was solely to determine if the defendant was in need of assistance, when the officer then noted that the defendant was unsteady on the defendant's feet, the defendant's voice was slurred, the defendant's eyes were red and glassy, and the defendant smelled strongly of alcoholic beverage, and when the defendant admitted driving the vehicle the officer had observed abandoned in a ditch, and had consumed several beers and gave an implausible explanation for the accident. Childress v. State, 251 Ga. App. 873, 554 S.E.2d 818 (2001).

Although a police officer who stopped the defendant for speeding did not conduct field sobriety tests after the officer noticed that the defendant had bloodshot, glassy eyes and smelled alcohol on the defendant's breath, the officer had probable cause to arrest the defendant for driving under the influence of alcohol because of the defendant's condition and the fact that an alco-sensor test the defendant agreed to take showed the presence of alcohol, and the appellate court reversed the trial court's judgment finding that the officer did not have probable cause to arrest the defendant and granting the defendant's motion to suppress evidence resulting from the defendant's arrest. State v. Sledge, 264 Ga. App. 612, 591 S.E.2d 479 (2003).

Police officer who saw the defendant standing over a motorcycle that was involved in an accident and detected a strong smell of alcohol coming from the defendant had probable cause to believe the defendant violated O.C.G.A. § 40-6-391(a) by driving a motor vehicle under the influence of alcohol to the extent it was less safe for the defendant to drive, and the trial court properly denied the defendant's motion in limine to exclude testimony regarding the results of a blood test the defendant took after the officer informed the defendant of the defendant's rights under Georgia's implied consent statute. Oliver v. State, 268 Ga. App. 290, 601 S.E.2d 774 (2004).

Undisputed testimony from an officer, who had extensive experience in DUI

cases, that the defendant admitted to drinking, had a strong odor of alcohol on the defendant's person, and had glossy eyes, provided sufficient probable cause to warrant an arrest for DUI despite the fact that the officer failed to have an independent recollection of the field sobriety tests the officer administered. *Frederick v. State*, 270 Ga. App. 397, 606 S.E.2d 615 (2004).

Suppression motion was properly denied as there was probable cause to arrest a defendant for driving under the influence after: (1) the defendant was stopped for speeding; (2) an officer noticed that the defendant's eyes were bloodshot, speech was slow, and that the defendant smelled of alcohol; and (3) field sobriety tests indicated that the defendant was under the influence of alcohol. *Moody v. State*, 273 Ga. App. 670, 615 S.E.2d 803 (2005).

Despite the defendant's claim that an officer's detention was illegal and thus, any statement uttered while detained should have been suppressed, suppression of that statement was properly denied, given that: (1) the officer encountered the defendant after responding to a 9-1-1 call reporting a crime at a specific location; and (2) the officer's personal observations, when coupled with the defendant's admission as to being drunk and driving a car onto the curb, as the 9-1-1 dispatcher had stated, supplied the officer with probable cause to arrest the defendant. *Moore v. State*, 281 Ga. App. 141, 635 S.E.2d 408 (2006).

There was probable cause to arrest a defendant for driving under the influence less safe under O.C.G.A. § 40-6-391 when an officer smelled alcohol on the defendant's breath and when the defendant admitted to having been drinking. Therefore, no basis for excluding the result of a blood-alcohol test to which the defendant subsequently consented arose as the fruit of the poisonous tree. *Hazley v. State*, 289 Ga. App. 558, 657 S.E.2d 628 (2008).

Although there was evidence supporting the trial court's finding that there was not probable cause to arrest the defendant for driving under the influence (DUI)-less safe, there was ample evidence to support probable cause to arrest the defendant for DUI per se. The results of two breath

tests, and the defendant's admission that the defendant had three to four drinks prior to driving and that the defendant had consumed the last of these about 30 minutes before the traffic stop established a reasonable probability that the defendant was in violation of § 40-6-391(a)(5). *State v. Rish*, 295 Ga. App. 815, 673 S.E.2d 259 (2009), cert. denied, *Rish v. State*, No. S09C0911, 2009 Ga. LEXIS 362 (Ga. 2009).

Officer's observations that a defendant was unsteady, smelled of alcohol, had glassy and blood-shot eyes, had marijuana in the defendant's possession, and was driving at night while playing music loud enough to be heard almost a mile away, gave the officer probable cause to arrest the defendant for DUI in violation of O.C.G.A. § 40-6-391(a)(5). *Brown v. State*, 302 Ga. App. 272, 690 S.E.2d 907 (2010).

Based on the evidence presented, the combination of the observed speed, the defendant's admitting that the defendant had been consuming alcohol, the odor of alcohol coming from the defendant, the condition of the defendant's eyes, the results of the AlcoSensor being positive, and the horizontal gaze nystagmus test results all provided probable cause for the arrest. Drawing all permissible inferences from the evidence in favor of the trial court's ruling, the trial court did not err by finding sufficient probable cause to support the defendant's arrest for driving under the influence to the extent that the defendant was less safe to drive. *Jaffray v. State*, 306 Ga. App. 469, 702 S.E.2d 742 (2010).

Officer was entitled to qualified immunity as to false arrest claim of arrestee arrested for driving under the influence because it was not clearly established that probable cause was lacking since, *inter alia*, the arrestee told the officer the arrestee had consumed at least two beers earlier in the evening, and admitted that the arrestee began changing lanes and abruptly swerved back into the original lane. *Bannister v. Conway*, 2013 U.S. Dist. LEXIS 152569 (N.D. Ga. Oct. 23, 2013).

Cash bond. — When a person is arrested by a state patrolman inside a municipality for driving under the influence, a deputy sheriff, even without authoriza-

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tion from the court, may accept a cash bond; the trial court, as a result, has the authority to order the cash bond forfeited. *Wilson v. State*, 167 Ga. App. 421, 306 S.E.2d 704 (1983).

Venue. — Exact location of operating a motor vehicle under influence of an intoxicant is not a material element of an offense under O.C.G.A. § 40-6-391 and the accusation is sufficiently certain if it charges that the offense was committed in a particular county. *Felchlin v. State*, 159 Ga. App. 120, 282 S.E.2d 743 (1981).

While the phrase “as prosecuting attorney for the county and state aforesaid” sufficiently established venue to support a violation of O.C.G.A. § 40-6-391(a)(1), the state’s failure to sufficiently allege venue in order to sustain a second count, charging a violation of O.C.G.A. § 40-6-391(a)(5), supported the defendant’s motion to quash the second count and reversal of the defendant’s conviction on that count. *Werner v. State*, 280 Ga. App. 853, 635 S.E.2d 234 (2006).

Appeals court rejected the defendant’s claim that the accusation failed to adequately charge venue as a charge of DUI incorporated the words “Henry County” in the heading by using the phrase “as prosecuting attorney for the county and state aforesaid” in the body of the accusation; but the court warned the state against such practice as the solicitor could easily devise forms which stated with clarity the county in which the offense allegedly occurred, and thereby avoid the costs which resulted from having to repeatedly defend the type of challenge the defendant raised. *Gordy v. State*, 287 Ga. App. 459, 651 S.E.2d 471 (2007), cert. denied, 2008 Ga. LEXIS 128 (Ga. 2008).

Removal to federal court disallowed. — When a substitute rural mail carrier employed by the United States Postal Service, while delivering mail for the United States Postal Service, was arrested and charged with driving under the influence of alcohol pursuant to O.C.G.A. § 40-6-391, the carrier’s petition to remove the pending state criminal prosecution to a federal district court was summarily dismissed as there was no causal

connection between the carrier’s official acts and the criminal allegations the carrier was charged with under state law. *Georgia v. Waller*, 660 F. Supp. 952 (M.D. Ga. 1987).

Transfer of case involving juveniles to superior court. — Evidence that a juvenile had a history of using marijuana and other drugs, had used marijuana before the juvenile lost control of a car the juvenile was driving while racing another car on a public street, causing a multi-car collision in which two people died, had challenged other people to automobile races on several occasions, violated the conditions of the juvenile’s driver’s license by driving with a non-family member, and used drugs after the accident was sufficient to support the juvenile court’s judgment that the juvenile was not amenable to treatment in the juvenile court system and that the interests of the juvenile and the community would be better served if the case was transferred to the superior court. In the Interest of *W.N.J.*, 268 Ga. App. 637, 602 S.E.2d 173 (2004).

Conviction for DUI in one county bars prosecution in other. — When a motorist is charged with speeding and driving under the influence in two counties, the motorist may be tried and convicted in both counties for speeding, but a conviction for driving under the influence in one county will bar prosecution in the other as this charge arises out of the same conduct in both counties. *State v. Willis*, 149 Ga. App. 509, 254 S.E.2d 743 (1979).

Prosecution of new offense time-barred. — Filing of a formal accusation beyond the applicable limitations period barred the prosecution for a violation of paragraph (a)(4) of O.C.G.A. § 40-6-391, brought two months after the original charge of a violation of paragraph (a)(1) of O.C.G.A. § 40-6-391, notwithstanding the fact that the new paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 offense may have stemmed from the same conduct as the original charge. *State v. Rustin*, 208 Ga. App. 431, 430 S.E.2d 765 (1993).

Defendant’s plea of nolo contendere waived any defenses and objections to the defendant’s conviction for driving under the influence of drugs when

the plea was voluntarily entered as shown by the defendant's ratification thereof by entering the plea on the back of the uniform traffic citation and signing the defendant's name. *Moffett v. State*, 228 Ga. App. 73, 491 S.E.2d 126 (1997).

Challenge to procedures used in reading the defendant the statutory implied consent warning and the proper working of the Intoxilyzer 5000 machine should have been appropriately raised by a motion in limine, not a motion to suppress. *Goddard v. State*, 244 Ga. App. 730, 536 S.E.2d 160 (2000).

Tort duty invocable against police officer. — Law enforcement officer owes a tort duty to a member of the general public injured by a drunk driver when the officer allows the noticeably intoxicated driver to continue operating a motor vehicle. *Landis v. Rockdale County*, 206 Ga. App. 876, 427 S.E.2d 286 (1993).

Tort duty not invocable against police officer. — Deputy sheriff was not liable to the widow of a motorist killed in a collision with a drunk driver whom the deputy had failed to arrest or otherwise restrain from driving; although the deputy may have been present at the scene of the crime in that the deputy observed an intoxicated driver, the deputy's duty to enforce drunk driving laws was to the public in general, not specifically to the motorist who was killed hours later in a collision with the intoxicated driver at another location. *Landis v. Rockdale County*, 212 Ga. App. 700, 445 S.E.2d 264 (1994).

Jurisdiction of arresting officer. — As a general rule, a municipal police officer is authorized to investigate crimes and/or arrest suspects only for those infractions that occur within that officer's territorial jurisdiction; however, an officer has authority to arrest a person accused of violating any law or ordinance governing the operation of a vehicle when the offense is committed in the officer's presence, regardless of territorial limitations. *State v. Gehris*, 242 Ga. App. 384, 528 S.E.2d 300 (2000).

When an officer from one agency released a motorist without conducting a complete investigation, if the officers from another jurisdiction have reasonable sus-

picion that the defendant was driving under the influence, the fact that the first officer chose not to investigate that issue does not deprive the other officers of the officer's independent authority to investigate. *State v. Gehris*, 242 Ga. App. 384, 528 S.E.2d 300 (2000).

Prosecutor's closing argument did not violate prohibition against golden rule arguments. — Prosecutor's remarks during a DUI offense did not violate the prohibition against golden rule arguments by asking the jurors to put themselves in the position of a victim since it is not improper for the state to appeal to the jury to convict for the safety of the community or to curb an epidemic of violence in the community. Nor is it improper for the prosecutor to emphasize to the jury the jury's responsibility to enforce the law. *Coghlan v. State*, 319 Ga. App. 551, 737 S.E.2d 332 (2013).

Mistrial properly denied. — Because the defendant was not prejudiced by a challenged juror's conduct in communicating with a state witness, namely, a police officer as: (1) the alleged improper communication was innocent; (2) the case was never discussed; and (3) once the involvement was discovered, the conversation immediately ended; hence, the trial court did not abuse the court's discretion in denying a mistrial. *Duncan v. State*, 281 Ga. App. 270, 635 S.E.2d 875 (2006).

New trial unwarranted when counsel's failure to object to evidence of prior DUI conviction did not result in prejudice. — Defendant's ineffective assistance of counsel claim did not warrant a new trial because sufficient evidence of the defendant's intoxication was presented in the record, and the defendant failed to show prejudice resulting from trial counsel's failure to object to the defendant's admission to having a prior DUI conviction, even though it was error for trial counsel not to object. *Thomas v. State*, 288 Ga. App. 827, 655 S.E.2d 701 (2007).

Continuance of case properly denied. — Trial court did not abuse the court's discretion by denying the defendant's request for a continuance because the court had granted a certificate pursuant to O.C.G.A. § 24-13-94 to permit the

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defense an opportunity to obtain the information and witnesses from the breathalyzer manufacturer, set the case with enough time for the defense to do so, and, after the Kentucky court issued an order denying the request, which order was entitled to full faith and credit, required the defendant to proceed to trial. *Phillips v. State*, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

Blood test results suppressed properly. — Before an unconscious person could have been deemed not to have withdrawn the implied consent to blood alcohol testing, that implied consent must have first existed as provided by O.C.G.A. § 40-5-55(a); consent was implied only if a person was arrested for a violation of O.C.G.A. § 40-6-391, and when the defendant was not arrested for any such violation before the blood test was conducted, a trial court properly suppressed the results of the blood test. *State v. Bass*, 273 Ga. App. 540, 615 S.E.2d 589 (2005).

Under Ga. Const. 1983, Art. I, Sec. I, Para. XIII, the defendant could not suppress the evidence of the blood test taken while the defendant was under suspicion for driving under the influence under O.C.G.A. § 40-6-391; because the state complied with the statutory implied consent requirements, the defendant was deemed under the implied consent provisions of O.C.G.A. § 40-5-55 to have given the defendant's consent to a test of the defendant's blood. *Meiklejohn v. State*, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Blood test properly admitted after defendant requested breath test. — After a defendant's van hit a utility pole, an officer did not violate O.C.G.A. § 40-6-392(a)(3) by failing to reasonably accommodate the defendant's request for a breath test as the officer believed that the defendant could not complete a breath test due to serious injuries to the defendant's mouth and jaw. Since the defendant was not in police custody, but was a hospital patient, and consented to a blood test after first requesting a breath test, evidence of the blood test was admissible in a prosecution for driving under the influence. *Fowler v. State*, 294 Ga. App. 864,

670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

Evidence insufficient to establish coercion as defense. — Appellate court chose not to disturb the jury's determination that the defendant was not coerced into driving while intoxicated because the defendant admitted that the defendant was not coerced into driving a truck away from a restaurant; the defendant testified that an employee of the restaurant asked the defendant to leave; the defendant drove away to avoid a fight; the defendant had three or four beers before driving the truck; the defendant had a cell phone in the defendant's possession but the defendant did not attempt to call 9-1-1, nor did the defendant ask the restaurant's employees to call a cab for the defendant; and the person who was trying to fight the defendant was in the parking lot but was not armed. *Hines v. State*, 308 Ga. App. 299, 707 S.E.2d 534 (2011).

Statute of limitation. — Because DUI was a predicate offense set out in the indictment against the defendant only as an element of the offense of vehicular homicide, in violation of O.C.G.A. § 40-6-393(a), and not as a separate crime for which the defendant risked separate criminal liability, a trial court did not err by denying the defendant's plea in bar because as a felony offense prosecution on the vehicular homicide counts were commenced within four years after the commission of the crime as required by O.C.G.A. § 17-3-1(c); the expiration of the limitations period for the driving under the influence counts did not preclude a prosecution for vehicular homicide. *Leachman v. State*, 286 Ga. App. 708, 649 S.E.2d 886 (2007), cert. denied, 2007 Ga. LEXIS 768 (Ga. 2007).

Evidence of subsequent DUI arrests admissible. — Evidence that in the seven months after a defendant was arrested for DUI in violation of O.C.G.A. § 40-6-391(a)(1), the defendant drove the defendant's vehicle twice while under the influence of alcohol to the extent it was less safe for the defendant to drive, was admissible as relevant to the defendant's bent of mind and course of conduct with respect to DUI. *Ayiteyfo v. State*, 308 Ga.

App. 286, 707 S.E.2d 186 (2011).

No provision for judgment notwithstanding the verdict in DUI case. — Trial court did not err in denying the defendant's motion for judgment notwithstanding the verdict (JNOV) after the defendant was convicted of driving under the influence to the extent that the defendant was a less-safe driver in violation of O.C.G.A. § 40-6-391(a)(1) because JNOV was not a remedy available in a criminal case. *Masood v. State*, 313 Ga. App. 549, 722 S.E.2d 149 (2012).

Qualified immunity of officer in civil rights claim based on driving under influence arrest. — Officer was entitled to summary judgment based on qualified immunity as to an arrestee's Fourth Amendment claim regarding the stop of the arrestee's vehicle because the officer had arguable reasonable suspicion to stop the arrestee since the officer responded to an off-duty officer's report that the arrestee was driving at an unusual speed and weaving across the road, and the off-duty officer identified the vehicle; also, officers had arguable probable cause to arrest the arrestee for driving under the influence. *Jenkins v. Gaither*, No. 12-15631, 2013 U.S. App. LEXIS 20296 (11th Cir. Oct. 4, 2013) (Unpublished).

Cited in *Carter v. State*, 38 Ga. App. 182, 143 S.E. 441 (1928); *Hixson v. Barrow*, 135 Ga. App. 519, 218 S.E.2d 253 (1975); *Torley v. State*, 141 Ga. App. 366, 233 S.E.2d 476 (1977); *Elder v. State*, 143 Ga. App. 610, 239 S.E.2d 160 (1977); *Howe v. Cofer*, 144 Ga. App. 589, 241 S.E.2d 472 (1978); *Huff v. State*, 144 Ga. App. 764, 242 S.E.2d 361 (1978); *Brock v. State*, 146 Ga. App. 78, 245 S.E.2d 442 (1978); *Garrett v. State*, 146 Ga. App. 610, 247 S.E.2d 136 (1978); *Cofer v. Crowell*, 146 Ga. App. 639, 247 S.E.2d 152 (1978); *Keenan v. Buchanan*, 148 Ga. App. 279, 251 S.E.2d 120 (1978); *Lewis v. State*, 149 Ga. App. 181, 254 S.E.2d 142 (1979); *State v. Black*, 149 Ga. App. 389, 254 S.E.2d 506 (1979); *Grizzle v. State*, 153 Ga. App. 364, 265 S.E.2d 324 (1980); *Vann v. State*, 153 Ga. App. 710, 266 S.E.2d 349 (1980); *Jackson v. Willis*, 2 Bankr. 566 (Bankr. M.D. Ga. 1980); *Arnold v. State*, 163 Ga. App. 94, 292 S.E.2d 891 (1982); *Rogers v. State*, 163 Ga. App. 641, 295 S.E.2d 140 (1982);

State v. Chumley, 164 Ga. App. 828, 299 S.E.2d 564 (1982); *Stewart v. State*, 165 Ga. App. 62, 299 S.E.2d 134 (1983); *Reliance Ins. Co. v. Bridges*, 168 Ga. App. 874, 311 S.E.2d 193 (1983); *Wessels v. State*, 169 Ga. App. 246, 312 S.E.2d 361 (1983); *Steed v. City of Atlanta*, 172 Ga. App. 839, 325 S.E.2d 165 (1984); *Pfeiffer v. State*, 173 Ga. App. 374, 326 S.E.2d 562 (1985); *McElroy v. State*, 173 Ga. App. 685, 327 S.E.2d 805 (1985); *Russell v. State*, 174 Ga. App. 436, 330 S.E.2d 175 (1985); *Peters v. State*, 175 Ga. App. 463, 333 S.E.2d 436 (1985); *Atkins v. State*, 175 Ga. App. 470, 333 S.E.2d 441 (1985); *Melton v. State*, 175 Ga. App. 472, 333 S.E.2d 682 (1985); *Drayton v. State*, 175 Ga. App. 780, 334 S.E.2d 720 (1985); *McNair v. State*, 177 Ga. App. 502, 339 S.E.2d 773 (1986); *Billingslea v. State*, 177 Ga. App. 775, 341 S.E.2d 305 (1986); *Lovell v. State*, 178 Ga. App. 366, 343 S.E.2d 414 (1986); *Smith v. State*, 180 Ga. App. 620, 349 S.E.2d 754 (1986); *Branch v. State*, 182 Ga. App. 818, 357 S.E.2d 136 (1987); *House v. State*, 184 Ga. App. 724, 362 S.E.2d 429 (1987); *Williams v. Hart*, 83 Bankr. 840 (Bankr. M.D. Ga. 1987); *Odom v. State*, 185 Ga. App. 496, 364 S.E.2d 626 (1988); *Smith v. State*, 185 Ga. App. 531, 364 S.E.2d 907 (1988); *Brooks v. State*, 187 Ga. App. 194, 369 S.E.2d 801 (1988); *Hale v. State*, 188 Ga. App. 524, 373 S.E.2d 250 (1988); *Browning v. State*, 188 Ga. App. 591, 373 S.E.2d 654 (1988); *Sapp v. State*, 188 Ga. App. 700, 374 S.E.2d 114 (1988); *State v. Speir*, 189 Ga. App. 254, 375 S.E.2d 298 (1988); *Harrison v. Brunson*, 82 Bankr. 634 (Bankr. S.D. Ga. 1988); *Parsons v. State*, 190 Ga. App. 803, 380 S.E.2d 87 (1989); *Vulcan Life Ins. Co. v. Davenport*, 191 Ga. App. 79, 380 S.E.2d 751 (1989); *Helms v. State*, 191 Ga. App. 283, 381 S.E.2d 428 (1989); *Manley v. State*, 191 Ga. App. 376, 381 S.E.2d 592 (1989); *Corley v. State*, 192 Ga. App. 35, 383 S.E.2d 586 (1989); *Sturdy v. State*, 192 Ga. App. 71, 383 S.E.2d 632 (1989); *Griner v. State*, 192 Ga. App. 283, 384 S.E.2d 398 (1989); *Moore v. Jarvis*, 885 F.2d 1565 (11th Cir. 1989); *Harbin v. State*, 193 Ga. App. 248, 387 S.E.2d 367 (1989); *King v. State*, 194 Ga. App. 69, 389 S.E.2d 500 (1989); *Kolker v. State*, 260 Ga. 240, 391 S.E.2d 391 (1990); *Lord v. State*, 194 Ga. App. 749, 392

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S.E.2d 17 (1990); Studebaker's of Savannah, Inc. v. Tibbs, 195 Ga. App. 142, 392 S.E.2d 908 (1990); Trammell v. State, 196 Ga. App. 540, 396 S.E.2d 286 (1990); Menendez v. Jewett, 196 Ga. App. 565, 396 S.E.2d 294 (1990); Eppinger v. State, 198 Ga. App. 889, 403 S.E.2d 829 (1991); Anderson v. State, 199 Ga. App. 595, 405 S.E.2d 504 (1991); Brantley v. State, 199 Ga. App. 623, 405 S.E.2d 533 (1991); Purser v. State, 201 Ga. App. 839, 412 S.E.2d 869 (1991); Kendrick v. State, 202 Ga. App. 164, 413 S.E.2d 785 (1991); Anderson v. State, 262 Ga. 26, 413 S.E.2d 732 (1992); Bowden v. State, 202 Ga. App. 802, 415 S.E.2d 527 (1992); Gazaway v. State, 207 Ga. App. 641, 428 S.E.2d 659 (1993); Pratt v. State, 208 Ga. App. 617, 431 S.E.2d 397 (1993); Payne v. State, 209 Ga. App. 780, 434 S.E.2d 543 (1993); Cheevers v. Clark, 214 Ga. App. 866, 449 S.E.2d 528 (1994); Martin v. State, 217 Ga. App. 860, 460 S.E.2d 92 (1995); Dooley v. State, 221 Ga. App. 245, 470 S.E.2d 803 (1996); Pitts v. State, 231 Ga. App. 9, 498 S.E.2d 534 (1998); Ballenger Paving Co. v. Gaines, 231 Ga. App. 565, 499 S.E.2d 722 (1998); Radcliffe v. State, 234 Ga. App. 576, 507 S.E.2d 759 (1998); In re B.C.G., 235 Ga. App. 1, 508 S.E.2d 239 (1998); Lambropoulos v. State, 234 Ga. App. 625, 507 S.E.2d 225 (1998); Griffin v. State, 242 Ga. App. 878, 531 S.E.2d 752 (2000); Berkow v. State, 243 Ga. App. 698, 534 S.E.2d 433 (2000); Thompson v. State, 243 Ga. App. 878, 534 S.E.2d 151 (2000); Perdue v. Caffey (In re Caffey), 248 B.R. 920 (Bankr. N.D. Ga. 2000); Couch v. State, 246 Ga. App. 106, 539 S.E.2d 609 (2000); Rodriguez v. State, 275 Ga. 283, 565 S.E.2d 458 (2002); Northside Equities, Inc. v. Hulsey, 275 Ga. 364, 567 S.E.2d 4 (2002); State v. Johnson, 257 Ga. App. 162, 570 S.E.2d 627 (2002); Perdue v. State, 256 Ga. App. 765, 578 S.E.2d 456 (2002); Lockett v. State, 257 Ga. App. 412, 571 S.E.2d 192 (2002); Johnson v. State, 261 Ga. App. 633, 583 S.E.2d 489 (2003); Gantt v. State, 263 Ga. App. 102, 587 S.E.2d 255 (2003); Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379 (2006); Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592 (2008); Brantley v. State, 290

Ga. App. 764, 660 S.E.2d 846 (2008); Dunagan v. State, 283 Ga. 501, 661 S.E.2d 525 (2008); Hernandez v. State, 297 Ga. App. 177, 676 S.E.2d 795 (2009); Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89 (2009); State v. Rowell, 299 Ga. App. 238, 682 S.E.2d 343 (2009); Jacobs v. State, 308 Ga. App. 117, 706 S.E.2d 737 (2011); Smith v. State, 324 Ga. App. 100, 749 S.E.2d 395 (2013).

Notice

Notice of offense. — Notice given that driving under the influence of alcohol is a crime is adequate. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Citation reciting that the defendant was stopped for driving over the centerline, describing the defendant as a less than safe driver with the smell of alcohol on the defendant's breath and unsteady on the defendant's feet, who failed an alco-sensor test and whose blood alcohol measured .10 percent was sufficient to charge a violation of O.C.G.A. § 40-6-391(a)(1). Shannon v. State, 205 Ga. App. 831, 424 S.E.2d 51, cert. denied, 205 Ga. App. 901, 424 S.E.2d 51 (1992).

Provision authorizing punishment for a "high and aggravated misdemeanor" upon a third or subsequent conviction of DUI does not create a separate and independent offense and did not constitute a material allegation in an accusation. State v. Phillips, 206 Ga. App. 421, 425 S.E.2d 412 (1992).

Indictment only put the defendant on notice that the defendant could be convicted if the marijuana or cocaine had made the defendant a less safe driver. The indictment did not put the defendant on notice that the defendant could be convicted solely on the physical act of driving with any amount of marijuana or cocaine in the defendant's blood or urine under O.C.G.A. § 40-6-391(a)(5). Kevinezz v. State, 265 Ga. 78, 454 S.E.2d 441 (1995).

Citation was not vague when the citation informed the defendant that the defendant was charged with violating O.C.G.A. § 40-6-391 by driving the defendant's vehicle under the influence of alcohol and specifically provided that a DUI breath test was administered showing an

alcohol level of .17 grams. *Shelton v. State*, 216 Ga. App. 634, 455 S.E.2d 304 (1995).

Accusation charging an offense under O.C.G.A. § 40-6-391 was sufficient even though the accusation did not contain the exact wording of the current section. *Wade v. State*, 223 Ga. App. 222, 477 S.E.2d 328 (1996).

Indictment or accusation charging a defendant with driving under the influence of alcohol or drugs, even if it does not specify to the extent it was less safe for the defendant to drive, is an indictment that charges the defendant with violating paragraph (a)(1), (a)(2), or (a)(3) of O.C.G.A. § 40-6-391; but would not put a defendant on notice that a defendant was convicted under paragraph (a)(4) or (a)(5) of O.C.G.A. § 40-6-391 which does not contain the phrase “under the influence” and does not require the state to prove impaired driving ability. *Power v. State*, 231 Ga. App. 335, 499 S.E.2d 357 (1998).

Indictment stating that the defendant “did then and there unlawfully drive a moving vehicle while under the influence of alcohol, so that it was less safe for the defendant to drive, there being not less than .10 percent by weight of alcohol in his blood” was sufficient notice of two ways the defendant could be convicted of driving under the influence. *Kennon v. State*, 232 Ga. App. 494, 502 S.E.2d 330 (1998).

Trial court did not err when the court denied the defendant’s motion to quash the defendant’s traffic citation because the citation did not identify the specific subsection of O.C.G.A. § 40-6-391 which the defendant violated. *Fluellen v. State*, 264 Ga. App. 19, 589 S.E.2d 847 (2003).

Trial court properly denied the defendant’s motion to quash count one of the accusation filed against the defendant as: (1) although the accusation did not specify a particular drug that the defendant was alleged to have been driving under, O.C.G.A. § 40-6-391(a)(2) prohibited driving under the influence of any drug; (2) the defendant was informed of the charged offense, and that the defendant would need to meet the charges that the defendant drove while under the influence of amphetamines and cannabinoids; (3) the defendant could not reasonably claim

that the defendant was surprised by evidence introduced at trial or was unable to prepare a defense; (4) the defendant did not risk future prosecution for the same offenses; and (5) the defendant was not misled to the defendant’s prejudice by any imperfection in the accusation, and any error was harmless. *Buchanan v. State*, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

Fair construction of defendant’s Uniform Traffic Citation showed that the citation indicated a violation of O.C.G.A. § 40-6-391(a)(5), unlawful alcohol concentration; when the citation showed that the defendant’s breath results were “.223,” and that the defendant was charged with “DUI,” defendant was on adequate notice of a charge of unlawful alcohol concentration. *Taylor v. State*, 265 Ga. App. 637, 595 S.E.2d 344 (2004).

Accusation that charged the defendant, age 19, with being a minor under 18 while driving with an alcohol concentration of .02 or more was not fatally variant with the proof at trial, because the charge cited O.C.G.A. § 40-6-391, the correct statute under which the defendant was charged, and the defendant could not be surprised with proof of the defendant’s own age. *Mills v. State*, 271 Ga. App. 506, 610 S.E.2d 80 (2004).

Count phrasing sufficiently descriptive. — Accusation was sufficiently descriptive to defeat a motion in arrest of judgment where reference of “such driving and being in actual physical control” incorporated preceding count’s explicit reference to “actual physical control of a moving vehicle.” *Jones v. State*, 206 Ga. App. 604, 426 S.E.2d 179 (1992).

Traffic citation’s notice sufficient. — Defendant’s contention that the state’s failure to recite the words “to the extent that it was less safe for the person to drive” constituted a fatal defect insufficiently alleging the essential elements of O.C.G.A. § 40-6-391 for purposes of notice did not hold when the defendant could not demonstrate any prejudice to oneself. As such, it was enough that the necessary facts could appear in any form, or by fair construction could be found within the terms of the traffic citation, including the mere recital of the statute. *Brooks v. State*, 207 Ga. App. 477, 428 S.E.2d 357 (1993).

Notice (Cont'd)

Notice of implied consent rights. — Trial court erred in concluding that the state's breath tests related to a charge of DUI against the defendant were not admissible and had to be suppressed on the ground that a police officer did not read the defendant's implied consent rights at the scene of the defendant's arrest in a local park; the defendant was not arrested in the local park for DUI, but, instead, was arrested for criminal trespass and it was not until the defendant was taken to a detention center that the defendant was arrested for DUI, at which time the officer read to the defendant the implied consent rights. *State v. Jones*, 261 Ga. App. 357, 583 S.E.2d 139 (2003).

Because the defendant, who was charged with driving under the influence in violation of O.C.G.A. § 40-6-391, was confused after a police officer read the defendant the implied consent warning, and the defendant failed to respond to the officer's request to administer the chemical breath test, this response was tantamount to a refusal. *State v. Adams*, 270 Ga. App. 878, 609 S.E.2d 378 (2004).

Pursuant to O.C.G.A. § 40-5-67.1(d.1), a trial court did not err in denying the defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant voluntarily consented to the breath test. *Jones v. State*, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

Failure to give notice of implied consent rights. — Trial court did not have to find as a matter of fact that the officer read the implied consent warning before arresting the defendant in order to grant the motion to suppress as the court's grant of the motion was adequately supported by the state's failure to meet the state's burden of proving that the implied consent warning was read after arrest; hence, the state failed to meet the state's burden because the trial court found the officer's testimony lacked credibility and there was no other evidence showing that the warning was given after the defendant's arrest. *State v. Stelzenmuller*, 285 Ga. App. 348, 646 S.E.2d 316 (2007).

Trial court properly granted the defendant's motion to suppress the results of a state-administered blood test showing that the defendant had marijuana in defendant's system at the time of a fatal car accident as the testing was obtained by an officer without the officer giving the implied consent notice to defendant. *State v. Morgan*, 289 Ga. App. 706, 658 S.E.2d 237 (2008), cert. denied, 2008 Ga. LEXIS 504 (Ga. 2008).

Testing

Constitutionality. — Because a defendant was arrested for driving under the influence under O.C.G.A. § 40-6-391 based on probable cause and the state complied with the implied consent requirements of O.C.G.A. § 40-5-55, the defendant could not complain that drug and alcohol testing violated the search and seizure provisions of the Fourth Amendment or the Georgia Constitution because the implied consent statute allowed for the warrantless compelled testing of bodily fluids based on the existence of probable cause but without proof of the existence of exigent circumstances. *Cornwell v. State*, 283 Ga. 247, 657 S.E.2d 195 (2008).

Field sobriety tests were not "state-ments" and were not inadmissible under the constitution even if the defendant was in custody and had not been read the defendant's Miranda rights. *Morrisette v. State*, 229 Ga. App. 420, 494 S.E.2d 8 (1997).

Miranda warnings are not required to precede field sobriety tests during routine roadside questioning when the detained driver is not under formal arrest but exhibits many physical manifestations of intoxication amounting to probable cause to arrest. *Arce v. State*, 245 Ga. App. 466, 538 S.E.2d 128 (2000).

Field sobriety tests are not designed to detect the mere presence of alcohol in a person's system, but to produce information on the question whether alcohol is present at an impairing level such that the driver is less safe within the meaning of O.C.G.A. § 40-6-391(a)(1). *Werner v. State*, 246 Ga. App. 677, 538 S.E.2d 168 (2000).

Because a police officer reasonably sus-

pected that the defendant was intoxicated, the officer had a legal basis for asking the defendant to submit to field sobriety tests without violating the Fourth Amendment; when the defendant refused to take the tests, the evidence was sufficient to find the defendant guilty of driving under the influence to the extent that the defendant was a less safe driver in violation of O.C.G.A. § 40-6-391. *Long v. State*, 271 Ga. App. 565, 610 S.E.2d 74 (2004).

Possibility that officers might have called a tow truck before giving field sobriety tests did not mean that the defendant was in custody after the truck was called, thereby requiring Miranda warnings before the tests were given; the defendant had not known that the tow truck was called and thus there was no basis to believe the detention was not temporary. *Grodhaus v. State*, 287 Ga. App. 628, 653 S.E.2d 67 (2007), cert. denied, 2008 Ga. LEXIS 173 (Ga. 2008).

Trial court did not err in denying the defendant's motion to suppress and motion in limine to exclude the defendant's field sobriety test results because the officers who stopped the defendant's vehicle were not required to advise the defendant of the defendant's Miranda rights prior to the field sobriety testing since although the defendant was not free to leave, the defendant was not handcuffed or placed in the patrol car during the investigation, and in addition to informing the defendant of the reason for the stop, the officers told the defendant that the officers had to wait for a HEAT Unit officer to determine whether the defendant was too impaired to safely operate the defendant's vehicle; based upon the circumstances, the trial court was authorized to find that a reasonable person would believe that the defendant's freedom of action was only temporarily curtailed pending further investigation during the traffic stop, and the delay of approximately twenty-five minutes between the initial stop and the HEAT Unit officer's arrival at the scene did not automatically convert the investigation into a custodial situation. *Waters v. State*, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

Defendant's motion to suppress evi-

dence obtained on the night of the defendant's arrest for driving under the influence of alcohol in violation of O.C.G.A. § 40-6-391(a)(1) should not have been granted as the defendant was not in custody for purposes of Miranda during the investigation. *State v. Mosley*, 321 Ga. App. 236, 739 S.E.2d 106 (2013).

Arrest is not prerequisite to chemical test. — Arrest for driving under the influence (DUI) was not a prerequisite for administration of a chemical test. If an officer had reasonable grounds to believe a traffic offense was committed while the defendant was violating DUI laws, a chemical test was proper and admissible. *State v. Goolsby*, 262 Ga. App. 867, 586 S.E.2d 754 (2003).

Requests for chemical tests. — Amendment to O.C.G.A. § 40-5-67.1, effective August 18, 1995, provides that the new implied consent warning requirement applies only as to "an offense committed on or after April 21, 1995." The applicable law in situations where the request for testing is made regarding an offense occurring before April 21, 1995, includes, *inter alia*, that a suspect is not entitled to a warning which tracks the exact language of O.C.G.A. § 40-5-67.1; the sufficiency of the warning is to be judged by its content and not its form; and the warning must inform the suspect that the suspect could have an additional test by a qualified person of the suspect's own choosing. *State v. Golub*, 220 Ga. App. 810, 470 S.E.2d 331 (1996).

Trial court did not err in granting the defendant's motion to suppress evidence of a state-administered breath test because the state failed to reasonably accommodate the defendant's request for an independent blood test; when a officer learned that the defendant did not have sufficient cash for a blood test at one of the recommended hospitals the defendant should have been offered the opportunity to use a telephone to make other arrangements, and the officer's unilateral determination that the defendant would be unable to pay for the blood test, without confirming the hospitals' policies regarding payment and without offering to accommodate the defendant in obtaining a method of payment, was insufficient.

Testing (Cont'd)

State v. Davis, 309 Ga. App. 558, 711 S.E.2d 76 (2011).

Chemical test may be requested despite absence of probable cause. — Chemical test may be requested under the implied consent statute even though the arresting officer lacks probable cause to arrest for substance-influenced driving if the officer has at least reasonable grounds to believe that a violation of O.C.G.A. § 40-6-391 has occurred. Whiteley v. State, 188 Ga. App. 129, 372 S.E.2d 296 (1988), cert. denied, 188 Ga. App. 913, 372 S.E.2d 296 (1988).

“Unable” to provide breath sample equals refusal. — In a prosecution for driving under the influence, when the arresting officer testified that the defendant pretended to, but did not, blow into a breath-alcohol testing machine (which had been tested and was certified as working properly), and the defendant testified as to why the defendant was unable to provide an adequate breath sample, the trial court properly admitted evidence of the defendant’s “refusal” to submit to a breath test. Walker v. State, 262 Ga. App. 872, 586 S.E.2d 757 (2003).

Calibration of breath test instrument. — There is a presumption in all cases arising under O.C.G.A. § 40-6-391 that the Director of the State Crime Laboratory has caused the instrument used to administer the breath test to be checked periodically for calibration. Sapp v. State, 184 Ga. App. 527, 362 S.E.2d 406 (1987).

Source code for breath test machine not discoverable. — In a driving-while-intoxicated case, the defendant was not entitled to discovery of the “source code” used to program a breath test machine. The defendant did not show that the code was in the possession, custody, or control of the state as required by O.C.G.A. §§ 17-16-1(1) and 17-16-23(b). Hills v. State, 291 Ga. App. 873, 663 S.E.2d 265 (2008).

In a DUI case, the state was not required to disclose the computer source code for the Intoxilyzer 5000 used to measure the defendant’s blood alcohol under O.C.G.A. § 40-6-392(a)(4) because the state did not have access to the source

code from the Intoxilyzer’s Kentucky manufacturer and had not attempted to gain access to the code. Smith v. State, 325 Ga. App. 405, 750 S.E.2d 758 (2013).

Lapse of time between test and violation. — Intoximeter operator’s testimony that the operator conducted an intoximeter test on defendant at 2:49 a.m. and that the results were “.14 grams per 100 cc’s of blood” was sufficient to sustain the defendant’s conviction under paragraph (a)(4) of O.C.G.A. § 40-6-391 even though the operator admitted that the operator was not able to testify as to the defendant’s blood alcohol content level at the time of the violation, 40 minutes earlier. Simon v. State, 182 Ga. App. 210, 355 S.E.2d 120 (1987).

Trial court erred in suppressing the defendant’s alcohol test results on the ground that there was no evidence that a blood sample was taken within three hours of the accident allegedly caused by the defendant’s drunken driving; O.C.G.A. § 40-6-391(a)(5) does not require such test to be administered within three hours of the accident. State v. Allen, 256 Ga. App. 798, 570 S.E.2d 34 (2002).

Breathalyzer machine test results are based on accepted scientific theory or “rest upon the laws of nature”; and, when the statutory requirements for admissibility are met, the results may be admitted into evidence without expert testimony regarding the scientific theory behind the operation of the test. Brown v. State, 202 Ga. App. 371, 414 S.E.2d 505 (1991), cert. denied, 202 Ga. App. 371, 414 S.E.2d 505 (1992).

When the jury in a first trial “rejected” breath test results, in the sense that the jury concluded the results were insufficient to prove beyond a reasonable doubt that the defendant had the required alcohol concentration, the jury did not necessarily conclude that the breath test results were wholly lacking in probative value, and when the test results were not the only evidence supporting a less safe driver charge, the state was not precluded by the doctrine of collateral estoppel from introducing evidence of the breath test results in a subsequent trial. Sullivan v. State, 235 Ga. App. 768, 510 S.E.2d 136 (1998).

Denial of the defendant's motion to suppress the results of the breath tests was proper when the evidence showed there was probable cause for the defendant's arrest and subsequent testing. *Maurer v. State*, 240 Ga. App. 145, 525 S.E.2d 104 (1999).

Defendant's conviction for driving under the influence to the extent that the defendant's blood-alcohol content exceeded the legal limit was reversed as the trial court erroneously admitted a photostatic copy of the Intoxilyzer report over a best evidence objection, the state was unable to explain the absence of the original, the state presented no evidence that the state made any effort to locate the original, and former O.C.G.A. § 24-7-20 (see now O.C.G.A. § 24-9-920) did not apply. *Lumley v. State*, 280 Ga. App. 82, 633 S.E.2d 413 (2006).

Trial court did not err in denying suppression of the results of the defendant's Intoxilyzer 5000 and other field sobriety tests administered upon a defendant's arrest for driving with an unlawful alcohol concentration and driving under the influence of alcohol in violation of O.C.G.A. § 40-6-391 as: (1) the arguments the defendant raised about the officer's ability to manipulate the Intoxilyzer 5000 test went to the weight, and not admissibility of the evidence; (2) the officer was sufficiently trained to administer the tests; (3) the state showed substantial compliance with the required procedures; and (4) no due process violation resulted from the evidence being admitted. *Stewart v. State*, 280 Ga. App. 366, 634 S.E.2d 141 (2006).

Evidence was sufficient for the trial court to find beyond a reasonable doubt that the defendant was guilty of driving an automobile with an unlawful alcohol concentration in violation of O.C.G.A. § 40-6-391(a)(5) because to carry the state's burden to show that the Intoxilyzer machine on which the defendant's breath was tested was operated with all the machine's electronic and operating components attached and in good working order, the state produced certificates of inspections conducted on the machine before and after the test, and the testimony of the operator that the machine was operating properly when the test was con-

ducted; the machine produced test results showing that the defendant had an alcohol concentration of 0.179 grams. *Yeary v. State*, 302 Ga. App. 535, 690 S.E.2d 901 (2010).

Only computer printout of intoxilyzer test is discoverable. — Trial court did not err in denying the defendant's motion for disclosure of scientific reports pursuant to O.C.G.A. § 40-6-392(a)(4) because intoxilyzer test results were provided to the defendant, and the defendant's discovery request was overbroad when the defendant sought information far beyond the scope of information to which the defendant was entitled under § 40-6-392(a)(4); the only discoverable information from an intoxilyzer test under § 40-6-392(a)(4) is the computer printout of the test result because unlike the gas chromatography test, which produces data that has to be interpreted by a chemist to determine blood alcohol level, an intoxilyzer does not produce raw data but rather prints out the actual test result showing the person's blood alcohol level, which means that the machine computes the test result. *Stetz v. State*, 301 Ga. App. 458, 687 S.E.2d 839 (2009).

Evidence of field sobriety test harmless. — Conviction under O.C.G.A. § 40-6-391(a)(5) does not require the state to prove impaired driving ability. Thus, even if the results of the field sobriety tests should have been excluded, the trial court's failure to exclude the results was harmless error when the breath test results, which were not challenged on appeal, provide sufficient proof of the per se violation. *Partridge v. State*, 266 Ga. App. 305, 596 S.E.2d 778 (2004).

Defendant was not harmed by the trial court's denial of a motion to exclude the results of the defendant's horizontal gaze nystagmus (HGN) test from the trial for a charge of driving under the influence of alcohol to the extent the defendant was a less safe driver, O.C.G.A. § 40-6-391(a)(1), because the record showed that the HGN test evidence did not contribute to the verdict. The trial court found that the administration of the field sobriety tests by the officer were incorrect, but noted that the court had given the results of those tests little or no

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weight. *Cash v. State*, 299 Ga. App. 303, 682 S.E.2d 607 (2009), cert. denied, No. S09C1984, 2010 Ga. LEXIS 50 (Ga. 2010).

Correlation between horizontal gaze nystagmus test and blood alcohol content. — At a trial for a violation of O.C.G.A. § 40-6-391(a)(1), an officer's testimony as to the likelihood of blood/alcohol concentration based on certain results on the horizontal gaze nystagmus test was relevant since field sobriety test results were relevant and there was nothing inflammatory or misleading about the evidence. *Webb v. State*, 277 Ga. App. 355, 626 S.E.2d 545 (2006).

Breath test evidence irrelevant. — In defendant's prosecution for driving while under the influence of alcohol to the extent that the defendant was a less safe driver, the defendant's blood alcohol was irrelevant so admission of the results of a breath test, even if erroneous, was harmless error and the defendant's conviction would not be reversed on the ground of admission of that evidence. *Worthman v. State*, 266 Ga. App. 208, 596 S.E.2d 643 (2004).

Breath test admissible. — Trial court properly denied the defendant's motion in limine, admitting an Intoxilyzer 5000's certificate of inspection as nontestimonial, as well as the defendant's breath test results; even if error was presented, it was harmless since the defendant was acquitted of driving under the influence with an unlawful blood alcohol concentration. Moreover, the incident report was properly admitted under the rule of completeness as the trial court was authorized to find that it was necessary for the state to admit all relevant parts of the incident report in evidence to show that the omissions noted by the defendant were not so material as to have effected the accuracy of the report. *Phillips v. State*, 289 Ga. App. 281, 656 S.E.2d 905 (2008).

Trial court did not abuse the court's discretion by denying the defendant's motion for mistrial after the jury accidentally heard the numerical result of an Alco-Sensor test because the trial court gave the jury a curative instruction, and the totality of the evidence was sufficient

by itself to support the jury's finding that the defendant was guilty beyond a reasonable doubt of driving under the influence, O.C.G.A. § 40-6-391(k)(1). *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Court of appeals did not err in reversing an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3). Thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state administered breath test. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

Breath test admissible despite delay. — Breath test results were admissible at a trial for a violation of O.C.G.A. § 40-6-391(a)(1) and (5) as the police officer's notification to the defendant of the implied consent rights under O.C.G.A. § 40-6-392(a)(4) was timely in the circumstances; although the defendant was placed in the police car and not given the notification for 18 minutes, the notice was timely because the officer was attending to the passenger and ensuring that the passenger was unharmed and had a safe way to get home and the officer was transporting possession of the vehicle for purposes of impounding the vehicle. *Naik v. State*, 277 Ga. App. 418, 626 S.E.2d 608 (2006).

Breath test admissible despite initial refusal. — Trial court was not required to suppress evidence of the defendant's breath test results, although it was clear that the defendant refused to take a breath test when asked at the scene, as the defendant rescinded that refusal by agreeing to take the test at the police station. *Stapleton v. State*, 279 Ga. App. 296, 630 S.E.2d 769 (2006).

At the time of a defendant's arrest for DUI, the defendant refused to submit to a breath test; after the officer gave the defendant the chance to rescind this refusal, the defendant agreed to take the test in

the absence of any threats or inducements. As the officer did not act unreasonably in attempting to induce the defendant to rescind the initial refusal, the test results were admissible. *State v. Quezada*, 295 Ga. App. 522, 672 S.E.2d 497 (2009).

Refusal not evidence of the presence of alcohol. — Jury charge that a DUI defendant's refusal to submit to a blood alcohol test could create an inference that the test would show the presence of alcohol which impaired the defendant's driving was plain error, requiring a new trial, because the charge shifted the burden of proof to the defendant, requiring the defendant to rebut the inference that the defendant was an impaired driver. *Wagner v. State*, 311 Ga. App. 589, 716 S.E.2d 633 (2011).

Use of terms "percent" or "grams." — Although the intoximeter test results in this case were expressed in numbers which represent the percentage of alcohol in the blood by weight, or grams, those results frequently have been referred to without qualifying the results with either the term "percent" or the term "grams," and are commonly understood to mean the amount of alcohol in a certain weight of the subject's blood, expressed as a percentage. *Page v. State*, 202 Ga. App. 828, 415 S.E.2d 487, cert. denied, 202 Ga. App. 907, 415 S.E.2d 487 (1992).

Denial of pretrial intoximeter inspection motion harmless. — Acquittal under subsection (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 precluded any harm in denying the defendant's motion for pretrial inspection of an intoximeter device and was no basis for reversal of convictions under subsection (a)(1) of O.C.G.A. §§ 40-6-391 and 3-3-23(a)(2). *Gilbert v. State*, 262 Ga. 840, 426 S.E.2d 155 (1993).

Uncertified photocopies of a certificate of inspection for an Intoxilyzer 5000 were admissible after a police officer testified at trial that the officer personally made the photocopies of the original certificates. *Wright v. State*, 238 Ga. App. 442, 519 S.E.2d 461 (1999).

Results of defendant's intoximeter test were admissible because the arresting officer advised the defendant of the defendant's rights under the implied consent law as close in proximity to the

instant of arrest as the circumstances warranted, since after the officer stopped the defendant and put the defendant in the patrol car, the officer got a call and went after another vehicle, picked up the driver and then took both of the drivers to the police station and read the defendant the implied consent rights while the drivers were in the patrol car. *Fore v. State*, 180 Ga. App. 196, 348 S.E.2d 579 (1986).

Blood test results were admissible for driving offenses. — In a prosecution for driving under the influence of marijuana and driving under the influence of drugs to the extent of being a less safe driver, even though the hospital consent form signed by the defendant was entitled "Request for Alcohol Testing," the test results, which were positive for marijuana, were admissible since the defendant had earlier consented to testing after receiving the required implied consent notice. *State v. Lewis*, 233 Ga. App. 390, 504 S.E.2d 242 (1998).

Trial court did not err in denying a motion to suppress evidence of the blood-alcohol results obtained after the defendant's vehicle was stopped and it was determined that the defendant was driving under the influence; the defendant consented to such a test as a driver using a vehicle on the Georgia highways and the delay in administering the implied consent warning was due to the defendant's drunken condition and difficult behavior. *Cain v. State*, 274 Ga. App. 533, 617 S.E.2d 567 (2005).

Although the state was unable to prove that the defendant's blood-alcohol content exceeded the legal limit within three hours of driving, as required by O.C.G.A. § 40-6-391(a)(5), the jury was authorized to consider the blood test results in connection with the charge that the defendant was a less safe driver. *Furlow v. State*, 276 Ga. App. 332, 623 S.E.2d 186 (2005).

Defendant's argument, that the officer advised the defendant that the defendant was under arrest for driving under the influence and not for a violation of O.C.G.A. § 40-6-391(a)(6) and that the defendant never consented to the testing of the defendant's blood for the presence of drugs, failed; nothing in O.C.G.A.

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§ 40-5-55 or O.C.G.A. § 40-6-392 required the officer to tell the defendant that the defendant was under arrest for a drug offense in order for the implied consent to be valid. *Meiklejohn v. State*, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Results of chemical tests administered to defendant were inadmissible since the crime laboratory report on the tests did not state on the report's face the exact numerical quantity of the drugs found in the defendant's blood and urine. *Box v. State*, 187 Ga. App. 260, 370 S.E.2d 28 (1988).

Trial court erred in denying the defendant's motion to suppress the results of a blood test the defendant consented to after a state trooper read defendant the implied consent notice under O.C.G.A. § 40-5-67.1(b)(2), which informed the defendant that Georgia law required the defendant to submit to chemical testing, that the refusal to submit to testing would lead to the suspension of the defendant's driving privileges, and that the defendant's refusal might be offered into evidence against the defendant at trial; the defendant was not suspected of violating O.C.G.A. § 40-6-391 when the defendant was advised of the implied consent law, O.C.G.A. § 40-5-55(a) (which was unconstitutional), and the defendant's consent was invalid. *Cooper v. State*, 277 Ga. 282, 587 S.E.2d 605 (2003).

Suppression of chemical breath test results were required because after the defendant failed to respond to the officer's request to administer the chemical breath test and because such a response was tantamount to a refusal, when the defendant was then taken to a detention center, it was error to administer the test without the defendant being asked to consent again or without reading the defendant's implied consent warnings pursuant to O.C.G.A. § 40-5-67.1. *State v. Adams*, 270 Ga. App. 878, 609 S.E.2d 378 (2004).

Trial court erred in denying a motion to suppress the defendant's chemical test results that were obtained under the implied consent statute, O.C.G.A. § 40-5-55(a), as the defendant was not arrested after a fatal crash for any offense

in violation of O.C.G.A. § 40-6-391 nor was there probable cause to arrest the defendant for any such violation. *Costley v. State*, 271 Ga. App. 692, 610 S.E.2d 647 (2005).

State-administered test results improperly admitted. — Defendant's conviction for underage driving under the influence (blood alcohol content) was reversed as the trial court improperly denied the defendant's motion in limine premised on the arresting officer's failure to provide the defendant with an independent chemical test of the defendant's blood after defendant plainly requested one; that the defendant's request for a blood test was made prior to the defendant's arrest and the giving of the implied consent warnings was not determinative under these facts and the officer's failure to inquire into the defendant's request for an independent test required the suppression of the results of the state-administered test. *McGinn v. State*, 268 Ga. App. 450, 602 S.E.2d 209 (2004).

Trial court did not err in denying defendant's motion to exclude state-administered test results. — Trial court did not err in denying the defendant's motion to exclude the results of a state-administered breath test because a state trooper's initial overstatement of the legal blood alcohol concentration, which the trooper corrected immediately, was so not misleading that it rendered the defendant incapable of making an informed decision about whether to submit to chemical testing; the videotape recording demonstrated that before the trooper read the implied consent notice, the defendant told the trooper that the defendant knew that 0.08 grams was the legal limit applicable to individuals over the age of 21. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Trial court properly denied the defendant's motion in limine to exclude evidence that the defendant refused chemical testing based on the testimony of a deputy that while in the defendant's hospital room, a ticket was written for drunk driving and the defendant was advised of the custodial arrest; thus, there was no error in the trial court's determination that a reasonable person in the defendant's posi-

tion would not think that they were free to leave at the time the deputy read the implied consent warnings. *Plemmons v. State*, 755 S.E.2d 205, 2014 Ga. App. LEXIS 69 (2014).

Failure to allow independent urine test. — Judgment of conviction entered against the defendant for driving under the influence of alcohol to the extent it was less safe to drive had to be reversed as the trial court erred in admitting the results of a breath test since the defendant also requested that an independent urine test be performed as was the defendant's right under the law, and since that right was not honored, the law dictated that the breath test was not admissible to support the defendant's conviction. *Johnson v. State*, 261 Ga. App. 633, 583 S.E.2d 489 (2003).

Trial court erred in not suppressing the results of the state-administered breath test that the defendant gave after the defendant was arrested for driving under the influence of alcohol; the defendant exercised the defendant's right to also request that an additional test be performed by asking that the defendant be given an independent urine test, and since that right was not honored, the state-administered breath test was not admissible to support the defendant's conviction. *Johnson v. State*, 261 Ga. App. 633, 583 S.E.2d 489 (2003).

Admissibility of results of test performed pursuant to medical treatment. — When the blood-alcohol test was performed pursuant to the medical treatment of the plaintiff and recorded in the regular course of hospital business, and the blood-alcohol test was not administered for the purpose of determining whether the plaintiff violated O.C.G.A. § 40-6-391, it was not necessary that the defendant establish compliance with that statute to render the test results admissible; the blood test results thus recorded in the regular course of hospital business were admissible under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803). *Bynum v. Standard (Chevron) Oil Co.*, 157 Ga. App. 819, 278 S.E.2d 669 (1981).

Trial court did not err in denying the defendant's motion for an independent expert to examine the intoximeter that

was used to test the defendant's breath because any testing by such an expert would not prove that the machine gave an inaccurate reading for the defendant since the original test condition, including the defendant's own physical condition, could not have been duplicated. *Blanos v. State*, 192 Ga. App. 835, 386 S.E.2d 714 (1989).

Trial court did not err in admitting the results of a blood test administered to the defendant in the course of medical treatment as the right to refuse a state-administered test was entirely independent of the state's prerogative, pursuant to a warrant obtained in accordance with the Fourth Amendment, to obtain test results as other evidence of a crime. *Rylee v. State*, 288 Ga. App. 784, 655 S.E.2d 239 (2007).

Admissibility of blood test. — State showed to a reasonable certainty that the blood tested at a lab was the same as that drawn from the defendant, notwithstanding a discrepancy between the testimony of the person who drew the blood and the person who tested the blood as to the color of the stopper on a sealed vial. *Brown v. State*, 201 Ga. App. 441, 411 S.E.2d 286 (1991).

Because the police had probable cause to believe that the defendant was impaired, in violation of O.C.G.A. § 40-6-391, when the defendant caused a vehicle accident that resulted in serious injury of one vehicle occupant and the death of another occupant, based on the defendant's appearance and statements made to medical personnel, the trial court found that the implied consent notice was properly administered and suppression of the state-administered chemical tests was denied; although the defendant was not under arrest at the time the implied consent notice was read to the defendant, given the serious injuries resulting from the accident and the fact that there was probable cause to believe the defendant was driving while impaired, the consent to testing was implied pursuant to O.C.G.A. § 40-5-55. *Ellis v. State*, 275 Ga. App. 881, 622 S.E.2d 89 (2005).

Inadmissibility of blood test. — When an officer failed to read appropriate warnings to the defendant, it was error to admit results of the defendant's breath

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tests, even though the defendant had stipulated to the facts that would be demonstrated by the results of the tests, i.e., that the defendant had a blood alcohol level of .207. *Richards v. State*, 269 Ga. 483, 500 S.E.2d 581 (1998), reversing *Richards v. State*, 225 Ga. App. 777, 484 S.E.2d 683 (1997).

Horizontal gaze nystagmus test was a valid indication of the presence of alcohol, the results of which were admissible. *Manley v. State*, 206 Ga. App. 281, 424 S.E.2d 818 (1992).

Officer was properly permitted to testify that, in the officer's opinion, the defendant was under the influence of alcohol to the extent that it was less safe for the defendant to drive based on the results of the horizontal gaze nystagmus test the officer administered. *Sieveck v. State*, 220 Ga. App. 218, 469 S.E.2d 235 (1996).

Evidence regarding the officer's training and experience in administering field sobriety tests and the procedures the officer followed in administering horizontal gaze nystagmus tests justified admission of the results of the defendant's tests. *Tuttle v. State*, 232 Ga. App. 530, 502 S.E.2d 355 (1998).

There was no merit to a defendant's argument that the results of a horizontal gaze nystagmus test should not have been admitted because an officer did not perform the test properly. The officer substantially performed the test in accordance with the guidelines, and the defendant showed six clues of impairment. *Hann v. State*, 292 Ga. App. 719, 665 S.E.2d 731 (2008).

Defendant, who had cerebral palsy, failed to show that the results of a horizontal gaze nystagmus test performed on the defendant were unreliable and therefore inadmissible due to the defendant's medical condition. Moreover, the officers had sufficient other evidence to arrest the defendant for driving under the influence, including erratic driving, an odor of alcohol, the defendant's admission that the defendant had been drinking, and the results of an alco-sensor test. *Harris v. State*, 301 Ga. App. 775, 689 S.E.2d 91 (2009).

Arresting officer's performing one of the three evaluative components of the horizontal gaze nystagmus (HGN) test (the smooth pursuit component) "a little quickly" did not render the entire test inadmissible, given evidence of the officer's experience at giving the test, that the defendant was a proper subject, and that the other components were correctly performed. *Parker v. State*, 307 Ga. App. 61, 704 S.E.2d 438 (2010).

Passive alcohol sensor. — Trial court properly convicted the defendant of driving under the influence and related charges after a bench trial, and no error occurred with regard to the trial court failing to suppress the evidence gathered by the arresting officer's use of a passive alcohol sensor; the defendant was not harmed by any alleged error since the state never offered any of the evidence directly gathered by the sensor for admission during trial. *Sultan v. State*, 289 Ga. App. 405, 657 S.E.2d 311 (2008).

Although a trial court should have suppressed the results of an improperly performed horizontal gaze nystagmus (HGN) test, with regard to defendant's convictions for driving under the influence offenses, such error was harmless since the trial court specifically stated on the record that the trial court did not consider the HGN test; therefore, the test did not contribute to the verdict in the case. *Sultan v. State*, 289 Ga. App. 405, 657 S.E.2d 311 (2008).

Injuries' impact on field sobriety test admissibility. — Admissibility of field sobriety tests was not affected by the defendant's injuries at the time the tests were given. *Morrisette v. State*, 229 Ga. App. 420, 494 S.E.2d 8 (1997).

Error in excluding HGN test results. — Officer's comment to the defendant that "I'm just going to shut your car door so some other drunk doesn't take it off," was insufficient to cause a reasonable person to believe that the person's detention would not have been temporary, and a trial court erred in excluding on the basis of a *Miranda* violation evidence of the results of roadside sobriety tests performed on the defendant thereafter; evidence concerning the officer's improper administration of a horizontal gaze

nystagmus (HGN) test did not mandate the exclusion of the test results, and the trial court erred in excluding the results of the HGN evaluation. *State v. Pierce*, 266 Ga. App. 233, 596 S.E.2d 725 (2004).

Miranda warnings before administering field sobriety tests. — Defendant's suppression motion was properly denied as an officer was not required to give the defendant Miranda warnings before administering field sobriety tests as the officer did not make any statement that would cause a reasonable person to believe that the defendant was under arrest and not temporarily detained during an investigation. *Moody v. State*, 273 Ga. App. 670, 615 S.E.2d 803 (2005).

Because the Miranda requirements were not triggered until the defendant's arrest, and after performance of the field sobriety tests, suppression of the test results was not required. *Doyle v. State*, 281 Ga. App. 592, 636 S.E.2d 751 (2006).

Trial court did not err by denying the defendant's motion to suppress or motion for new trial with regard to the defendant's convictions for driving under the influence because it was not necessary for the stopping officer to advise the defendant of the Miranda rights prior to administering the field sobriety tests since the defendant was not under arrest. Officers are not required to provide warnings under Miranda prior to administering field sobriety tests during a traffic stop unless the suspect is in custody. *Appling v. State*, 320 Ga. App. 379, 739 S.E.2d 816 (2013).

Evidence of the defendant's refusal to submit to voluntary field sobriety tests was admissible, and was not testimonial in nature and thus subject to the Fifth Amendment protection against self-incrimination as a refusal to submit to the tests was not testimonial in nature, and the mere fact that the defendant refused to submit to a blood test was not subject to the privilege against self-incrimination since no impermissible coercion was involved, regardless of the form of refusal. *Ferega v. State*, 286 Ga. App. 808, 650 S.E.2d 286 (2007), cert. denied, 129 S. Ct. 195, 172 L.Ed.2d 140 (2008).

Probable cause for arrest existed. — Trial court properly convicted the de-

fendant of driving under the influence and related charges after a bench trial because probable cause existed to arrest the defendant based on the officer's observations of: (1) the defendant having slurred speech and red, watery eyes; (2) having a positive breath test result; (3) having the smell of alcohol coming from the defendant's vehicle; and (4) the defendant admitting to drinking. *Sultan v. State*, 289 Ga. App. 405, 657 S.E.2d 311 (2008).

Based on the totality of the circumstances, an officer had probable cause to arrest the defendant for driving under the influence; the evidence showed that the officer, while investigating a one-vehicle accident in which the defendant's truck ran off the road, detected the odor of alcohol when talking with the defendant, and observed that the defendant's speech was mumbled and slow, and that the defendant's eyes were bloodshot. The defendant also initially gave the officer a credit card instead of a license, and admitted to having one or more drinks. *Cash v. State*, 299 Ga. App. 303, 682 S.E.2d 607 (2009), cert. denied, No. S09C1984, 2010 Ga. LEXIS 50 (Ga. 2010).

Probable cause for testing found. — Under the Fourth Amendment, an officer had probable cause to have a defendant submit to an alco-sensor test. The officer had validly stopped the defendant's car after a passenger littered, and the officer saw open beer bottles in the car and smelled alcohol in the car even after the bottles and the passenger had been removed. *Hinton v. State*, 289 Ga. App. 309, 656 S.E.2d 918 (2008).

There was probable cause under the Fourth Amendment for an officer to request a blood test under O.C.G.A. § 40-5-55 from a defendant suspected of driving under the influence when the defendant showed four out of six signs of impairment on a horizontal gaze nystagmus test, admitted to drinking, smelled of alcohol, had a positive alco-sensor result, and had bloodshot eyes. The fact that an officer did not believe that there was probable cause to request the blood test did not require a different finding as the scope of a person's Fourth Amendment rights was determined objectively. *State v. Preston*, 293

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Ga. App. 94, 666 S.E.2d 417 (2008).

Because plaintiff arrestee's initial blood alcohol level had been high enough for the initial O.C.G.A. § 40-6-391(a)(5) per se driving under the influence charge, but tests a year later by defendant crime lab employees resulted in lower levels, the lab employees were entitled to qualified immunity on the arrestee's Sixth Amendment compulsory process claim, which alleged the lab employees failed to disclose the lower results. The test of materiality had to be applied post-trial with the arrestee having to show that the suppression of the evidence undermined confidence in the outcome of the trial, and since the state judge and jury had found the arrestee's evidence and arguments convincing enough that the arrestee was not convicted of even the lesser DUI charge under O.C.G.A. § 40-6-391(a)(1), any additional testimony in the arrestee's favor would not have achieved a better result; thus, the materiality test had not been satisfied and the Sixth Amendment claim failed. *Kjellsen v. Mills*, 517 F.3d 1232 (11th Cir. 2008).

Denying defendant crime lab employees qualified immunity on plaintiff arrestee's Fourth Amendment malicious prosecution claim for nondisclosure of later blood alcohol level test results was reversed because: (1) the arrestee's blood alcohol level had been high enough for the initial O.C.G.A. § 40-6-391(a)(5) per se driving under the influence charge; and (2) it was undisputed that blood alcohol levels often decreased over time; thus, the lower level test results a year later did not negate probable cause. *Kjellsen v. Mills*, 517 F.3d 1232 (11th Cir. 2008).

Challenging test given by expert. — Trial court did not abuse the court's discretion by sequestering the defendant's expert witness with regard to challenging the officer's method of administering the horizontal gaze nystagmus test because the expert did not observe the actual test, thus, any opinion would have been based on the officer's testimony or on hypothetical questions posed by counsel and the

defendant had previously challenged the officer's method of administering the test in a motion to suppress and had the benefit of that testimony prior to trial. *Puckett v. State*, 321 Ga. App. 785, 743 S.E.2d 466 (2013).

Evidence**Construed with O.C.G.A. § 40-6-394.**

— State was not required to prove that a defendant was committing any traffic violation or unsafe act, in addition to a violation of paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391; it is sufficient that the evidence showed that the defendant's violation of that section caused an injury such as described in O.C.G.A. § 40-6-394, which specifies various types of serious injuries. *Jones v. State*, 195 Ga. App. 569, 394 S.E.2d 387 (1990).

Blood-alcohol content deemed direct evidence. — When the defendant contended the trial court erred by denying the defendant's request to charge the definitions of "direct" and "circumstantial evidence," arguing that the evidence relating to the percentage of alcohol in the defendant's blood at the time the defendant was driving is circumstantial because the percentage of alcohol in a person's breath, rather than the percentage of alcohol in the blood, is specified in paragraph (a)(4) of O.C.G.A. § 40-6-391, it was held that O.C.G.A. § 40-6-392(a) makes it clear that a breath test is used to determine the amount of alcohol in a person's blood, and since there was direct evidence that the defendant was driving an automobile on a public highway at 1:52 a.m., and direct evidence that 32 minutes later the intoximeter test registered a blood-alcohol content of .15, whether or not the evidence that the defendant was driving with .15 percent alcohol in the defendant's blood was circumstantial was immaterial, because, when there is some direct evidence involved in the case, it is not error to fail to charge on circumstantial evidence. *Herndon v. State*, 187 Ga. App. 313, 370 S.E.2d 164 (1988) (decided prior to 1988 amendment).

Breath testing instrument inspection certificate admissible. — In a defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391,

the inspection certificate for the instrument used to conduct the defendant's breath test under O.C.G.A. § 40-6-392(f) was properly admitted because it was not testimonial hearsay and did not violate the defendant's rights of confrontation; it was a business record that was not made in an investigatory or adversarial setting or generated in anticipation of the prosecution of a particular defendant. *Rackoff v. State*, 281 Ga. 306, 637 S.E.2d 706 (2006).

Manner of driving may be considered when there is evidence that the defendant has been drinking. *Turner v. State*, 95 Ga. App. 157, 97 S.E.2d 348 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Statement by witness that automobile "operated" by defendant. — Answer by state trooper that automobile was "operated" by the defendant accused of drunken driving was not subject to objection as a conclusion when the answer was in reference to facts observed by the witness when the trooper arrived at the scene. *Echols v. State*, 104 Ga. App. 695, 122 S.E.2d 473 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Blood alcohol evidence irrelevant. — Evidence of defendant's blood alcohol content was irrelevant to defendant's prosecution under the "less safe" provisions of O.C.G.A. § 40-6-391(a)(1). *Evans v. State*, 253 Ga. App. 71, 558 S.E.2d 51 (2001).

Any error in the admission of the defendant's hospital test results was harmless after the officer testified that, based on the accident, speaking with the defendant, and the odor of alcoholic beverage coming from the defendant's breath, the officer felt that the defendant was a less-safe driver when an accident occurred; even without the hospital's tests, the evidence of guilt was overwhelming in light of the manner of the crash, the defendant's admission to driving the car, and the officer's observations of the defendant's demeanor. *King v. State*, 272 Ga. App. 8, 611 S.E.2d 692 (2005).

Trial court did not abuse the court's discretion in excluding the evidence of the defendant's blood test obtained after being released from jail, which was negative for marijuana, because the state tried the

defendant only for violating O.C.G.A. § 40-6-391 by driving under the influence of alcohol, and the blood test shed no light on the defendant's alcohol impairment; thus, it was properly determined irrelevant by the trial court. *Smith v. State*, 324 Ga. App. 100, 749 S.E.2d 395 (2013).

Denial of motion in limine not error. — Trial court did not err in denying the defendant's motion in limine to exclude a failure to take a breath test and other evidence in a criminal trial on a charge of driving under the influence of alcohol to the extent that the defendant was a less safe driver, in violation of O.C.G.A. § 40-6-391, as there was probable cause to arrest the defendant without such tests based on the defendant's conduct and the officer's observations; the defendant was weaving in and out of lanes, fumbled with the bus controls when asked to turn off the vehicle, the defendant exited the vehicle in an unsteady manner, and the officer observed that the defendant spoke in a slow and confused way, and that the defendant smelled of alcohol. *Lewis v. State*, 276 Ga. App. 248, 622 S.E.2d 912 (2005).

Trial court did not err in denying the defendant's motion in limine to suppress the results of a state-administered breath test as an officer's implied consent warning was substantively accurate so as to allow the defendant to make an informed decision about whether to consent to the test, and solely referred to the defendant's privilege to drive within the state of Georgia with a Georgia driver's license, and not the defendant's Pennsylvania license; further, the officer's initial statement was nothing more than an attention-grabbing preface, and as such did not constitute a substantive change that altered the meaning of the implied consent notice thereafter recited to the defendant. *McHugh v. State*, 285 Ga. App. 131, 645 S.E.2d 619 (2007).

Trial court properly denied defendant's motion in limine and upheld defendant's conviction for driving under the influence as the traffic stop of his vehicle was justified since the evidence showed that he committed a traffic offense by making an abrupt turning maneuver in his vehicle to evade a roadblock, which was a suffi-

Evidence (Cont'd)

ciently suspicious and deliberately furtive response to the road check so as to give the officer at least a reasonable suspicion of defendant's criminal activity and to warrant further investigation. *Stinson v. State*, 318 Ga. App. 351, 733 S.E.2d 390 (2012).

Evidence sufficient to justify brief investigatory stop. — Merely observing a can of beer in the hand of one who is otherwise driving a car or operating a boat in a safe manner does, in and of itself, constitute an articulable suspicion that a violation of O.C.G.A. § 40-6-391 or O.C.G.A. § 52-7-12 may be occurring so as to authorize a brief investigatory stop. *State v. Baker*, 197 Ga. App. 1, 397 S.E.2d 554 (1990).

Denial of a motion to suppress was not error because the police officer who pulled the defendant over had probable cause to believe that the defendant was a less safe driver because the defendant was all over the road, smelled of alcohol, and threw up all over the place and the officer could have arrested the defendant under O.C.G.A. § 40-6-391, rather than wait for a DUI officer. *Abrahamson v. State*, 276 Ga. App. 584, 623 S.E.2d 764 (2005).

Because the defendant's apparent violation of O.C.G.A. § 40-6-16(a) gave the investigating officer a reasonable and articulable suspicion to stop the defendant and inquire further, the trial court erred in granting the defendant's motion to suppress a refusal to take a breath test in connection with DUI charges; moreover, the trial court erroneously concluded that the defendant could have had an innocent explanation for a last-minute swerve to avoid hitting the officer's patrol car as the issue went to the question of guilt or innocence and was not the dispositive question on a motion to suppress. *State v. Rheinlander*, 286 Ga. App. 625, 649 S.E.2d 828 (2007).

Trial court erred by granting the defendant's motion to suppress the evidence of a DUI violation obtained during the traffic stop of the defendant's vehicle by committing clear error in finding that the officer lacked a reasonable, articulable suspicion to stop the defendant's car as the officer

had received a radio dispatch and had obtained information from a fast-food restaurant employee that suspicious persons in a vehicle were hanging on the windows and cursing at the fast-food restaurant. Such actions involved engaging in disorderly conduct, which was an allegation of a crime that gave the officer grounds for conducting a brief traffic stop of the defendant's vehicle for investigatory purposes. *State v. Melanson*, 291 Ga. App. 853, 663 S.E.2d 280 (2008).

Defendant's conviction for DUI per se in violation of O.C.G.A. § 40-6-391(a)(5) was upheld. The traffic stop of the defendant was proper because the officer observed the defendant driving erratically, including sudden braking and weaving within the lane, even though the defendant was acquitted of failure to operate the vehicle within a single lane, O.C.G.A. § 40-6-48(1). *Ivey v. State*, 301 Ga. App. 796, 689 S.E.2d 100 (2009).

Trial court did not err by denying a motion to suppress because the evidence supported the trial court's conclusion that a police officer, who responded to a report of a fight in a parking lot, had an articulable suspicion to stop the defendant when the officer saw the defendant driving fast from the parking lot, and investigate further the defendant's connection to the reported fight. *Hines v. State*, 308 Ga. App. 299, 707 S.E.2d 534 (2011).

With regard to the defendant's conviction for driving under the influence, the trial court properly denied the defendant's motion to suppress because the officer had a reasonable, articulable suspicion to detain the defendant upon finding the defendant asleep behind the wheel of a vehicle with the engine running, and the defendant was unresponsive when the officer initially shined the officer's flashlight inside the vehicle. *Pierce v. State*, 319 Ga. App. 721, 738 S.E.2d 307 (2013).

Opportunity to take independent test. — Because the trial court found that the arresting officer made a reasonable effort to accommodate the defendant's request for an independent blood test pursuant to O.C.G.A. § 40-6-392(a)(3), the court did not err in denying the defendant's motion to suppress the blood test.

Whittle v. State, 282 Ga. App. 64, 637 S.E.2d 800 (2006).

Defendant's right to an independent blood alcohol content test under O.C.G.A. § 40-6-392(a)(3) was not invoked by asking the officer if the defendant could blow again because the defendant admitted that, at the time, the defendant did not know there was a difference between an independent test and the state's test and that the defendant was satisfied when the officer said that the defendant could blow again down at the station. *Waterman v. State*, 299 Ga. App. 630, 683 S.E.2d 164 (2009).

Request for an independent test. — Allegedly impaired driver's statement that the driver wanted "more tests" could not reasonably be construed as a request for an independent chemical test of the driver's own choosing because the driver made the request to the officer immediately after being given field sobriety tests. Therefore, the results of the state-administered test were properly admitted at trial. *Avery v. State*, 311 Ga. App. 595, 716 S.E.2d 729 (2011).

Breath test admissible despite refusal to permit defendant to consult with counsel. — Motion filed by a defendant to exclude the results of a breath test under the Georgia Implied Consent Law in the defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391 was properly denied because the defendant was not entitled to the advice of counsel before deciding whether to submit to the test; the right to counsel under U.S. Const., amend. 6 and Ga. Const. 1983, Art. I, Sec. I, Para. XIV did not come into play until the proceedings had reached a critical stage, and the breath test was not such a stage because it did not signal the beginning of a formal adversary hearing and because a lawyer could add little to the warnings required from the officer administering the test by O.C.G.A. § 40-6-392(a)(4). *Rackoff v. State*, 281 Ga. 306, 637 S.E.2d 706 (2006).

Delay in releasing state administered blood test results. — State's failure to immediately inform a defendant of the results of the state administered test does not create a situation where the defendant is left with no, or so little,

information that he or she is denied any meaningful choice in violation of due process; driving under the influence defendants must determine, often under difficult and stressful circumstances, whether to request an independent test, and that the choice may be difficult does not render it fundamentally unfair and this fact alone does not support a due process claim. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

Suppressed breath test results remained admissible for impeachment purposes. — Despite an order suppressing the defendant's breath test results, the results remained admissible for impeachment purposes once the defendant testified that the limited alcohol consumed did not affect or impair the defendant's ability to drive. Moreover, absent bad faith or an order requiring production, the state did not fail to fully disclose all information regarding the breath test. *Rosandich v. State*, 289 Ga. App. 170, 657 S.E.2d 255 (2008), cert. denied, 2008 Ga. LEXIS 380 (Ga. 2008).

Obtaining breathalyzer information from out-of-state manufacturer. — Trial court did not err by requiring defendant to proceed to trial without the source code and other requested information as it had granted a certificate under O.C.G.A. § 24-13-94 to permit the defense an opportunity to obtain the information from the breathalyzer manufacturer located in Kentucky, set the case with enough time to do so, and, after the Kentucky court issued an order denying the request, which order was entitled to full faith and credit, required defendant to proceed to trial. *Phillips v. State*, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

Use of roadblock. — Driving under the influence of alcohol conviction was upheld as the trial court properly denied the defendant's motion to suppress breath test results taken from an officer posted at a secondary roadblock, since the evidence supported the fact that the officer was part of the primary roadblock, and thus had a legitimate authority to stop the defendant; the fact that the officer may have served as the chase car was irrelevant as the chase car was also part of the primary roadblock. *Fischer v. State*, 261 Ga. App. 44, 581 S.E.2d 680 (2003).

Evidence (Cont'd)

In a trial for driving under the influence in violation of O.C.G.A. § 40-6-391(a)(1) and (5), the trial court properly suppressed results of the breath tests after determining that the arresting officer's testimony was not credible; although the defendant had bloodshot, red, and watery eyes and an odor of alcohol during a routine roadblock, those facts did not establish probable cause to arrest, and the defendant's refusal to perform field sobriety tests did not necessarily result in an inference that the defendant was unable to successfully perform the tests. *State v. Ellison*, 271 Ga. App. 898, 611 S.E.2d 129 (2005).

Even assuming that the probate court erroneously failed to grant the defendant's oral motion in limine concerning the constitutionality of a roadblock, the defendant's conviction for driving under the influence to the extent that it was less safe to drive was affirmed on appeal as similar evidence concerning the roadblock was admitted, without objection, making any error related to the admission of the objected-to evidence harmless beyond a reasonable doubt. *State v. Rigdon*, 284 Ga. App. 785, 645 S.E.2d 17 (2007), cert. denied, 2007 Ga. LEXIS 541 (Ga. 2007).

Because a form document, entitled the "Henry County Police Department Roadblock & Safety Checkpoint Record," introduced at a motion to suppress hearing by the state was properly admitted as a business record under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803), and the testimonial evidence regarding the primary purpose of the roadblock passed constitutional muster, in that it was legitimately conducted as part of a statewide "zero tolerance" campaign, the defendant's motion to suppress the evidence seized as a result was properly denied. *Yingst v. State*, 287 Ga. App. 43, 650 S.E.2d 746 (2007).

Trial court properly found that a roadblock leading to the defendant's arrest was lawful, pretermitted whether the requesting sergeant was a supervisory officer, and the trial court properly denied the defendant's motion to suppress evidence seized as a result of an arrest for DUI. The

record also supported the conclusions that all vehicles were stopped, that the delay to motorists was minimal, and that the roadblock was well identified, the stop was made within the constitutional confines of a routine motorist roadblock, and the defendant's arrest was the result of a personal decision to operate a motor vehicle while in an intoxicated state. *Velasquez v. State*, 288 Ga. App. 109, 653 S.E.2d 518 (2007).

In the defendant's trial for driving under the influence under 18 U.S.C. §§ 7 and 13 and O.C.G.A. § 40-6-391 and an open container violation under O.C.G.A. § 40-6-253, a motion to suppress evidence obtained as a result of a Selective Traffic Enforcement Program roadblock was denied because the roadblock reasonably fit within the Fourth Amendment constraints. Implied consent protections did not apply to field sobriety tests because the defendant was not under arrest at the time such tests were performed. *United States v. Howard*, No. CR208-09, 2008 U.S. Dist. LEXIS 72916 (S.D. Ga. Sept. 24, 2008).

Trial court did not err in denying the defendant's motion to suppress evidence obtained during a roadblock or in convicting the defendant of driving under the influence per se in violation of O.C.G.A. § 40-6-391 because the evidence was sufficient to show that the decision to implement the roadblock was made by a supervisory officer, which prevented the field officers from exercising unfettered discretion in stopping the drivers since the lieutenant and corporal who implemented the roadblock testified that they were supervisors in the traffic unit of the county sheriff's office; the trial court was authorized to find that the purposes of the roadblock were as stated by the lieutenant and corporal, and each of the identified purposes set forth in the order for the roadblock was a legitimate primary purpose. *Rappley v. State*, 306 Ga. App. 531, 702 S.E.2d 763 (2010).

Testimony from a sheriff's chief deputy authorized a trial court to find that a sergeant had authority to implement roadblocks and that the sergeant had a legitimate primary purpose for implementing a roadblock at which the defen-

dant was stopped and arrested, which was highway safety and driver sobriety. *Martin v. State*, 313 Ga. App. 226, 721 S.E.2d 180 (2011).

Trial court did not err in denying the defendant's motion to suppress evidence seized at a roadblock because the state met the state's burden of establishing the legitimate purpose of the roadblock by introducing a certified copy of a department of public safety roadblock approval form; the programmatic purposes set out in the roadblock form were supported by the other evidence at the suppression hearing, and the police officers' actions at the scene were in line with those purposes. *Hite v. State*, 315 Ga. App. 221, 726 S.E.2d 704 (2012), cert. denied, No. S12C1286, 2012 Ga. LEXIS 1020 (Ga. 2012).

Detention reasonable. — Trial court did not err in denying the defendant's motion to suppress evidence obtained at a roadblock after finding that the defendant's detention by the officers was not excessive because the trial court was authorized to conclude that the brief detention of the defendant was neither unreasonable nor illegal; the trial court's findings that the arresting officer detained the defendant for 20 minutes after the initial portable breath test to conduct an additional test and that the 20 minute delay was for the defendant's benefit of to insure that the portable alcohol test was not affected by residual alcohol due to the defendant's recent consumption of alcoholic beverages were supported by the evidence. *Owens v. State*, 308 Ga. App. 374, 707 S.E.2d 584 (2011), cert. denied, No. S11C1036, 2011 Ga. LEXIS 498 (Ga. 2011).

Trial court did not err in denying the defendant's motion to suppress evidence obtained at a roadblock because given the evidence presented, the trial court was authorized to conclude that the sergeant issued the order for the roadblock properly and initiated, authorized, and supervised the roadblock and that the sergeant's decision to implement the roadblock was made at the programmatic level for a legitimate primary purpose; the evidence supported the trial court's findings of fact that the information on the

roadblock approval form, which stated the reasons for the roadblock, did not conflict with any evidence presented as to when the roadblock was to be conducted or by whom the roadblock was authorized. *Owens v. State*, 308 Ga. App. 374, 707 S.E.2d 584 (2011), cert. denied, No. S11C1036, 2011 Ga. LEXIS 498 (Ga. 2011).

No probable cause for arrest. — Officers did not have probable cause to arrest the defendant for driving under the influence when the defendant displayed none of the telltale signs of inebriation and the defendant had an explanation for the wreck. *State v. Burke*, 230 Ga. App. 392, 496 S.E.2d 755 (1998).

Under the Tate standard, the defendant's breath test results, obtained while defendant was in custody, were properly suppressed as the arresting officer lacked probable cause to arrest the defendant for driving under the influence since: (1) the defendant had a single-car accident; (2) the defendant had two clues for intoxication in the HGN test, while the other four clues were inconclusive or indicated no intoxication; (3) the defendant's alco-sensor test results were positive for alcohol; (4) the trial court found that all of the alleged indicia of impairment were caused by the accident or lacked credibility; and (5) the defendant adequately explained the accident to the officer. *State v. Gray*, 267 Ga. App. 753, 600 S.E.2d 626 (2004).

Trial court should have directed a verdict of acquittal on a charge of DUI to the extent that the defendant was less safe; the only evidence was the smell of alcohol on the defendant's breath, but there was no evidence that the defendant's driving ability was impaired due to alcohol consumption. *Ojemuyiwa v. State*, 285 Ga. App. 617, 647 S.E.2d 598 (2007).

Trial court erred in denying a defendant's motion to suppress because the state did not establish sufficient probable cause to arrest the defendant for driving under the influence when the state offered no evidence showing that the defendant's driving ability was impaired due to alcohol consumption; evidence that an officer smelled alcohol on the defendant's breath, that an alco-sensor test revealed the presence of alcohol, and that the defendant

Evidence (Cont'd)

admitted that the defendant had been drinking "earlier in the day" was insufficient as a matter of law to constitute probable cause to arrest the defendant for driving under the influence. *Handley v. State*, 294 Ga. App. 236, 668 S.E.2d 855 (2008).

Although the defendant had glassy and watery eyes, smelled of alcohol, and admitted to drinking a glass of wine, other testimony supported an inference that the defendant was not an impaired driver; accordingly, the defendant's motion to suppress was properly granted based on a finding that there was no probable cause to arrest the defendant for violating O.C.G.A. § 40-6-391(a)(1). *State v. Goode*, 298 Ga. App. 749, 681 S.E.2d 199 (2009).

Trial court did not clearly err in granting a DUI defendant's motion to suppress evidence based on a lack of probable cause to arrest the defendant. The state failed to show that the defendant's driving ability was impaired due to alcohol consumption, O.C.G.A. § 40-6-391(a)(1), but only that the defendant tested positively for alcohol, that the defendant smelled of alcohol, and that the defendant admitted having drinks hours earlier. *State v. Damato*, 302 Ga. App. 181, 690 S.E.2d 478 (2010).

Weaving as providing probable cause. — It is well established that weaving, both out of one's lane and within one's own lane, particularly when combined with other factors, may give rise to reasonable articulable suspicion on the part of a trained law enforcement officer that the driver is violating the driving under the influence laws, and the conduct forming the basis of the reasonable suspicion need not be a violation of the law. *Veal v. State*, 273 Ga. App. 47, 614 S.E.2d 143 (2005).

Stop authorized when officer witnesses driver weaving outside lane. — Police officer who witnessed a driver weaving from the driver lane to the curb lane had reasonable information to believe that a criminal offense was being committed, and therefore had probable cause to stop the automobile. *State v. Bowen*, 231 Ga. App. 95, 498 S.E.2d 570 (1998).

Trial court did not err in denying the defendant's motion to suppress because the officer was justified in stopping the defendant's vehicle based on the videotaped evidence that established that the officer observed the defendant's vehicle failing to maintain the vehicle's lane in violation of O.C.G.A. § 40-6-48(1). *Acree v. State*, 319 Ga. App. 854, 737 S.E.2d 103 (2013).

Stop authorized when driver on wrong side of road. — Investigating officer had a reasonable articulable suspicion to stop the defendant's vehicle based on a violation of O.C.G.A. § 40-6-40 for driving on the wrong side of the road; hence, the defendant's motion to suppress was properly denied on this ground. *Dunbar v. State*, 283 Ga. App. 872, 643 S.E.2d 292 (2007).

Stop held invalid. — Since a 9-1-1 call from an unidentified informant did not provide the police with reasonable suspicion to stop the defendant's vehicle, the stop unreasonably intruded upon the defendant's Fourth Amendment rights; as a result, the trial erred by denying the defendant's motion to suppress. *Slocum v. State*, 267 Ga. App. 337, 599 S.E.2d 299 (2004).

In a prosecution for driving under the influence, the trial court erroneously denied the defendant's motion to suppress evidence seized as a result of a traffic stop made by an officer armed with only a "be on the lookout" warning as the officer lacked a particularized and objective basis for suspecting that the defendant was involved in any criminal activity, but admitted to possessing only scant information about the driver, the year and make of the vehicle being driven, and the vehicle's direction of travel; moreover, the mere fact that the defendant's gold Ford truck was located in the vicinity of the alleged crime did not necessarily give rise to articulable suspicion. *Murray v. State*, 282 Ga. App. 741, 639 S.E.2d 631 (2006).

Trial court did not err in finding that an officer's traffic stop was unreasonable and not based on the observation of an illegal right turn in violation of O.C.G.A. § 40-6-120(1), given evidence that the defendant activated the turn signal and checked for traffic behind the vehicle prior

to turning right from a lane adjacent to the right-hand-turn lane. Therefore, evidence of the defendant's alcohol consumption taken after the officer's stop was properly suppressed. *State v. Mincher*, 313 Ga. App. 875, 723 S.E.2d 300 (2012).

Stop held valid. — Despite the defendant's claim that a sheriff's deputy lacked a specific and articulable suspicion of criminal activity necessary to execute a traffic stop of the defendant's vehicle, and thus that the evidence seized thereafter had to be suppressed, the appeals court found otherwise as sufficient facts had been conveyed to the deputy prior to the stop for the deputy to have a reasonable belief that the defendant had been involved in a domestic dispute, and might be under the influence of alcohol to justify a finding that the resulting stop was valid; hence, suppression was properly denied. *Lacy v. State*, 285 Ga. App. 647, 647 S.E.2d 350 (2007), cert. denied, No. S07C1514, 2007 Ga. LEXIS 620 (Ga. 2007).

In a driving under the influence case, there was no merit to the defendant's argument that an officer lacked articulable suspicion to stop the defendant's vehicle. Testimony that the defendant was swerving showed that the defendant was not stopped because of mere inclination, caprice, or harassment, and the trial court accepted the officer's testimony that the full extent of the defendant's actions was not reflected on a video shown to the jury. *Hann v. State*, 292 Ga. App. 719, 665 S.E.2d 731 (2008).

Sufficient evidence to withstand motion for directed verdict. — Evidence was sufficient to deny a defendant's motion for a directed verdict in a prosecution for reckless vehicular homicide, reckless driving, DUI, running a red light, and failure to exercise due care when, after smoking crack and arguing with the defendant's former spouse, the defendant had struck a car from behind, struck a pedestrian, and collided with a burgundy car, killing the burgundy car's two occupants; the defendant was found slumped over on the front driver's side of the pickup truck the defendant was driving. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Because sufficient evidence was presented to support a finding that the defendant was intoxicated to the level that the intoxication caused both the defendant's loss of consciousness and an accident resulting in the defendant's truck straddling a ditch with the truck's nose down at close to a 90-degree angle, and the responding deputies testified that the defendant appeared to be under the influence of alcohol to the extent that it was less safe to drive, the defendant's conviction for violating O.C.G.A. § 40-6-391(a)(1) was supported by sufficient direct evidence of guilt; thus, a directed verdict of acquittal as to that charge was properly denied. *Stewart v. State*, 288 Ga. App. 735, 655 S.E.2d 328 (2007).

In a trial for driving under the influence of alcohol to the extent of being a less safe driver in violation of O.C.G.A. § 40-6-391(a)(1), the trial court properly denied the defendant's motion for a directed verdict, given a properly admitted 9-1-1 call describing the defendant's erratic driving, the defendant's admission to having had three drinks, the defendant's refusal to submit to chemical testing, and a police officer's testimony that it was the officer's opinion that the defendant was under the influence of alcohol to the extent of being a less safe driver. *Key v. State*, 289 Ga. App. 317, 657 S.E.2d 273 (2008).

Prior consumption only circumstantial evidence of later being under influence. — While there was direct evidence that the defendant had consumed some alcoholic beverage prior to the collision, this was at most only circumstantial evidence that the defendant was under the influence of alcoholic beverages at the time of the collision. *Culver v. State*, 80 Ga. App. 438, 56 S.E.2d 197 (1949) (decided under former Code 1933, § 68-307).

Use of circumstantial evidence. — Driving a vehicle while intoxicated may be shown by circumstantial evidence. *State v. Hill*, 178 Ga. App. 669, 344 S.E.2d 491 (1986); *Wooten v. State*, 234 Ga. App. 451, 507 S.E.2d 202 (1998).

While circumstantial evidence of a defendant's intoxication at the time of the defendant's arrest would not be admissible in a case charging violation of para-

Evidence (Cont'd)

graph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 as proof that the defendant had violated paragraph (a)(1) of O.C.G.A. § 40-6-391, such evidence is admissible as evidence of the circumstances surrounding the appellant's arrest for having violated paragraph (a)(4) (now (a)(5)). *Sapp v. State*, 184 Ga. App. 527, 362 S.E.2d 406 (1987).

To be guilty of the offense of driving under the influence of intoxicants one must drive or be in actual physical control of a moving vehicle while under the influence of alcohol or drugs. However, it is well settled that the driving of an automobile while intoxicated may be shown by circumstantial evidence, such as a police officer finding the defendant in a parked car, intoxicated, with the motor running. *Jones v. State*, 187 Ga. App. 132, 369 S.E.2d 509 (1988).

Although the evidence was circumstantial, the evidence justified a finding of guilt beyond a reasonable doubt after the officer observed and testified to circumstances from which a jury could infer that the defendant was in actual physical control of the car when the car was moved to the location where the officer found the car, and that the defendant was intoxicated while moving it there. *Johnson v. State*, 194 Ga. App. 501, 391 S.E.2d 132 (1990).

When the defendant smelled of marijuana, slurred the defendant's speech, admitted smoking marijuana, and refused to submit to testing to confirm the presence of the drug, the trial court reasonably concluded that there was at least some marijuana present in the defendant's system. *Albert v. State*, 236 Ga. App. 146, 511 S.E.2d 244 (1999).

Although the officer never saw the defendant in control of the vehicle on the public highway and no evidence was presented that the defendant was observed under the influence of alcohol at the time the defendant was driving since the defendant admitted driving the car when the defendant lost control and that the defendant moved the car to the parking lot after the accident, the evidence of events was sufficient to allow the trier of fact to con-

clude that the defendant was intoxicated at the time the defendant was in control of the defendant's car. *Goodson v. State*, 242 Ga. App. 167, 529 S.E.2d 175 (2000).

Evidence was sufficient to convict the defendant of driving under the influence under O.C.G.A. § 40-6-391(a)(1) since the evidence showed that the officer was almost struck by the defendant's erratic driving, that the defendant appeared to be intoxicated shortly thereafter, and that the defendant fled from the would-be arresting officer, thereby providing enough circumstantial evidence for the jury to conclude that the defendant's driving was less safe due to the use of alcohol. *Shockley v. State*, 256 Ga. App. 892, 570 S.E.2d 67 (2002).

Driving under the influence was provable by circumstantial evidence; although an officer did not see the defendant's car moving, the officer saw sufficient circumstances to support the defendant's driving under the influence-less safe driver conviction because, inter alia, the officer found the defendant passed out behind the steering wheel of a car haphazardly parked in a lot with the car's engine running and lights on, and the defendant admitted to driving after taking medicine. *Stephens v. State*, 271 Ga. App. 634, 610 S.E.2d 613 (2005).

Sufficient circumstantial evidence supported the defendant's conviction for driving under the influence of alcohol to the extent that the defendant was a less safe driver; a reasonable inference could be made from the circumstantial evidence when the defendant was found with alcohol on the defendant's breath and the defendant's truck in a ditch. *Raby v. State*, 274 Ga. App. 665, 618 S.E.2d 704 (2005).

Evidence supported a conviction for driving under the influence as: (1) a trooper found the defendant sleeping behind the wheel with two young children in the car; (2) the defendant's blood-alcohol content was well over the legal limit; and (3) the defendant had clearly driven off the road at some point before the trooper discovered the car. *Furlow v. State*, 276 Ga. App. 332, 623 S.E.2d 186 (2005).

Defendant's conviction for driving under the influence to the extent that the defendant was a less safe driver was af-

firmed as a police officer opined that the defendant was impaired and the officer testified that: (1) the defendant smelled of alcohol; (2) the defendant was speeding; (3) the defendant's eyes were red and glassy and the defendant's speech was slurred; (4) the defendant refused to submit to any field sobriety tests; and (5) the defendant swayed while standing still. *Lee v. State*, 280 Ga. App. 706, 634 S.E.2d 837 (2006).

Because sufficient evidence existed for the arresting officer to believe that the defendant was under the influence of alcohol, specifically, the defendant's erratic driving; detecting the odor of alcohol on the defendant's breath; observing that the defendant was very emotional, had been crying, and had a flushed face and watery eyes; and that the defendant admitted to consuming alcohol, the trial court properly denied suppression of the evidence gathered. *Slayton v. State*, 281 Ga. App. 650, 637 S.E.2d 67 (2006).

Even without evidence of the failed field sobriety tests, because the experienced officer's undisputed testimony sufficiently showed that the defendant: (1) traveled at a high rate of speed; (2) swerved in and out of the defendant's lane of travel at least five times; (3) switched lanes by crossing over the gore area of the highway several times; (4) had bloodshot eyes and slow, uncoordinated movements; (5) smelled of alcohol, slurred words, and was unsteady on the defendant's feet, both the arrest and conviction for driving under the influence were supported by sufficient evidence and sufficient probable cause. *Gregoire v. State*, 285 Ga. App. 111, 645 S.E.2d 611 (2007).

Sufficient circumstantial evidence existed to support the defendant's convictions given that: (1) the defendant admitted to drinking and driving the vehicle that an officer testified to as having a warm engine; (2) the defendant had slurred speech, bloodshot eyes, and swaying movements; and (3) the surrounding circumstances helped to show that the defendant had been drinking and driving recently enough to satisfy the three-hour requirement under O.C.G.A. § 40-6-391(a)(5). *O'Connell v. State*, 285 Ga. App. 835, 648 S.E.2d 147 (2007).

Defendant's conviction of driving under the influence was proper, though based on circumstantial evidence only, because the fact finder was not required to accept as reasonable the hypothesis that the defendant became intoxicated only after the defendant arrived home or that someone else was driving the defendant's car when a citizen saw the car running other cars off the road. *Silvers v. State*, 297 Ga. App. 362, 677 S.E.2d 410 (2009).

Trial court did not err in convicting the defendant of driving under the influence of alcohol to the extent the defendant was a less safe driver in violation of O.C.G.A. § 40-6-391(a) because the trial court could have found from the evidence that no other reasonable hypothesis existed for the defendant's presence at the scene of an accident other than that the defendant wrecked a car while driving under the influence when: (1) a police officer found the defendant slumped over the wheel of a wrecked car, which was resting up against a curb and blocking the road, with the ignition on; (2) there was no evidence of anyone else in the area who could have driven the vehicle; and (3) the defendant was passed out in the car, drooling, and smelling of alcohol; although the car was not running when the officer arrived, and the officer had not seen the car moving, the officer observed circumstances from which a fact-finder could infer that the defendant was in actual physical control of the car when the car was moved to the location where the officer found the car and that the defendant was intoxicated while moving the car there. *Patterson v. State*, 302 Ga. App. 27, 690 S.E.2d 625 (2010).

Evidence that a defendant was found slumped over, asleep, in the driver's seat of a car in a fast food restaurant, with the defendant's hands on the steering wheel, the engine running, the headlights on, and two empty bottles of vodka, along with evidence that the defendant admitted drinking prior to driving to the restaurant, was sufficient to convict the defendant of driving under the influence in violation of O.C.G.A. § 40-6-391(a)(5). *Lawson v. State*, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

Evidence was sufficient to convict the

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defendant of DUI less safe under O.C.G.A. § 40-6-391(a)(1), given that the defendant admitted to driving home from a bar where the defendant stopped to urinate, the defendant was just outside the vehicle, the engine was running, and no one else was around. Although the officer did not see the defendant driving, a jury could infer that the defendant had driven the car there. *Pough v. State*, 325 Ga. App. 547, 754 S.E.2d 129 (2014).

Stop based on erroneous facts. — It was not error to admit evidence and statements showing intoxication, even though the stop of the defendant's automobile was erroneous due to an error on the part of the officer or the dispatcher who "ran the tag" and erroneously determined that the automobile was stolen. *Cunningham v. State*, 231 Ga. App. 420, 498 S.E.2d 590 (1998).

Delay in reading implied consent warnings. — Trial court properly granted the defendant's motion to suppress the results of a chemical test of blood based on the undue delay between the arrest, after a traffic stop, and the reading of the implied consent warnings as: (1) the state trooper was presented with numerous opportunities to issue the warnings to the defendant, but did not; and (2) the trial court rejected the trooper's rationale for not reading the defendant the implied consent warnings at any other earlier opportunity, implicitly determining that the trooper's testimony was not credible. *State v. Austell*, 285 Ga. App. 18, 645 S.E.2d 550 (2007).

Evidence of prior DUI convictions. — Trial court properly admitted evidence of two prior driving under the influence convictions when there were sufficient similarities between the incidents that the two prior incidents were admissible to show course of conduct and bent of mind. *Simon v. State*, 182 Ga. App. 210, 355 S.E.2d 120 (1987); *Casoria v. State*, 210 Ga. App. 269, 435 S.E.2d 678 (1993).

In a prosecution for driving under the influence of alcohol to the extent that the defendant was a less safe driver, the trial court did not err in admitting evidence of the defendant's prior per se DUI conviction

to establish the defendant's bent of mind and course of conduct. *Miller v. State*, 250 Ga. App. 84, 550 S.E.2d 134 (2001).

Regardless of any slight variance of circumstances, evidence of the defendant's prior crime of driving with an unlawful blood alcohol content was properly admitted as similar transaction evidence to prove bent of mind or course of conduct in the defendant's subsequent prosecution for driving under the influence to the extent that it was less safe to drive in violation of O.C.G.A. § 40-6-391(a)(1) and for driving with an unlawful blood alcohol content in violation of O.C.G.A. § 40-6-391(a)(4). *Moran v. State*, 257 Ga. App. 236, 570 S.E.2d 673 (2002).

Because the defendant refused any testing of sobriety or blood alcohol content, an officer's testimony was sufficient to support a conviction for driving under the influence because the officer who arrested the defendant had stopped the defendant on a prior occasion as to which the defendant eventually admitted being less safe to drive so the officer was familiar with the defendant's appearance and demeanor when intoxicated, and could provide evidence sufficient to sustain a conviction and to provide probable cause to arrest the defendant. *Berry v. State*, 274 Ga. App. 831, 619 S.E.2d 339 (2005).

In a prosecution for vehicular homicide and driving under the influence (DUI), the trial court properly allowed evidence regarding the defendant's prior DUI as the defendant had pled guilty to that offense, the blood test results appeared on the uniform traffic citation, a certified copy of the accusation and plea was entered into evidence, and an officer testified that the defendant was the person arrested on that charge. *Hurston v. State*, 278 Ga. App. 472, 629 S.E.2d 18 (2006).

Defendant's prior driving under the influence (DUI) convictions were properly admitted as similar transaction evidence; not only was the evidence relevant for the purpose of showing the defendant's bent of mind and course of conduct on the night in question, but the prior DUI offenses were sufficiently similar to the defendant's current offense to be admissible. The state's evidence showed that all of the offenses

occurred near midnight and at similar locations, that the defendant made similar statements to officers on each occasion, and that the indicia of intoxication were similar in each case including the strong odor of alcohol, slurred speech, and blood-shot eyes. *Gamble v. State*, 283 Ga. App. 326, 641 S.E.2d 556 (2007).

In a less safe DUI case, the state made the required showing for similar transaction evidence under Ga. Unif. Super. Ct. R. 31.3(B) by stating the nature of the evidence and asking that the evidence be admitted to show the defendant's bent of mind and course of conduct, which were proper purposes for allowing similar transaction evidence in less safe DUI cases. *Steele v. State*, 306 Ga. App. 870, 703 S.E.2d 5 (2010).

Evidence of defendant's reputation for sobriety was irrelevant to the charge of driving under the influence. *King v. State*, 205 Ga. App. 825, 423 S.E.2d 429, cert. denied, 205 Ga. App. 900, 423 S.E.2d 429 (1992).

State need not prove defendant was drunk when driving. — It was not necessary that the state prove that the defendant was drunk when driving but rather that the state prove beyond a reasonable doubt that the defendant was under the influence of alcohol so as to make it less safe for the defendant to operate a motor vehicle. *Anderson v. State*, 203 Ga. App. 118, 416 S.E.2d 309, cert. denied, 203 Ga. App. 905, 416 S.E.2d 309 (1992).

Evidence supporting citation. — Even though the citation charging the defendant with driving under the influence to the extent it was less safe to drive contained a reference to the defendant's breath test result, the state was not required to prove the test result since it was not a part of the formal charge. *Tomko v. State*, 233 Ga. App. 20, 503 S.E.2d 300 (1998).

True test of the basis of conviction of driving while under the influence of intoxicants was when it was shown beyond a reasonable doubt that it was less safe for such person to operate a motor vehicle than it would be if the person were not so affected. *Turner v. State*, 95 Ga. App. 157, 97 S.E.2d 348 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

When evidence supported a guilty verdict under either paragraph (a)(1) or (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391, the state was not required to proceed under one paragraph or the other nor was the jury required to disclose the paragraph on which the jury based the jury's verdict. *Kuptz v. State*, 179 Ga. App. 150, 345 S.E.2d 670 (1986).

Photograph of defendant taken shortly after the defendant's arrest was admissible when the defendant's condition vis-a-vis alcohol influence was an issue and the defendant's physical appearance was some evidence in the case. *Farmer v. State*, 180 Ga. App. 720, 350 S.E.2d 583 (1986).

Police officers' opinion testimony that the defendant was under the influence of alcohol to the extent that the defendant was rendered a less safe driver was admissible. *Chance v. State*, 193 Ga. App. 242, 387 S.E.2d 437 (1989).

Police officer who stopped defendant at a supervised roadblock was competent to give the officer's opinion that the defendant's condition rendered the defendant a less safe driver, even though the officer had not observed the defendant's driving. *Waits v. State*, 232 Ga. App. 357, 501 S.E.2d 870 (1998).

Because an officer gave an opinion that the defendant was driving under the influence (DUI) after giving an extensive outline of the officer's years of DUI training and experience and of the officer's observations of the defendant, the opinion did not impermissibly invade the jury's province. *Karafiat v. State*, 290 Ga. App. 15, 658 S.E.2d 801 (2008).

Evidence was sufficient to convict a defendant of DUI (less safe) in violation of O.C.G.A. § 40-6-391(a)(2) after the defendant ran a police officer off the road, did not maintain the defendant's lane of travel, and exhibited impairment on sobriety tests; a blood test showed positive results for lorazepam, zolpidem, and mirtazapine. *Rivera v. State*, 309 Ga. App. 544, 710 S.E.2d 694 (2011).

Officer's testimony regarding authority to operate intoximeter. — Police officer's testimony as to authority to operate an intoximeter was sufficient, notwithstanding the defendant's assertion

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that a directed verdict should have been granted to the defendant on the charge of driving under the influence because the document offered by the state failed to reveal the officer was certified to operate the machine. *Williamson v. State*, 194 Ga. App. 439, 390 S.E.2d 658 (1990).

Evidence of implied consent warning. — When the state's only evidence concerning the implied consent warning was the deputy's conclusory statement that the deputy read a warning contained on a card, the state failed to meet the state's burden of proving compliance with the implied consent notice requirements. *Miller v. State*, 238 Ga. App. 61, 516 S.E.2d 838 (1999).

Admissibility of properly-conducted breathalyzer test. — Admissibility of breathalyzer test results is controlled solely by O.C.G.A. § 40-6-392 so that, as long as a test has been conducted in compliance with that statute, a defendant is precluded from attacking the admissibility of the test based on a challenge to the scientific reliability of the result. *Brannan v. State*, 261 Ga. 128, 401 S.E.2d 269 (1991).

Sufficient evidence was offered to allow admission of the defendant's breath test in order to prove the defendant's violation of O.C.G.A. § 40-6-391(a)(5) since the oral testimony of the administering officer indicated the officer's qualifications and compliance with the approved methods of the test as required by O.C.G.A. § 40-6-392(a)(1)(A); thus, the court had an adequate foundation laid in order to admit the test results. *Scara v. State*, 259 Ga. App. 510, 577 S.E.2d 796 (2003).

Trial court properly denied a defendant's motion to suppress the results of the breath test administered with regard to the defendant's conviction for driving with an unlawful alcohol concentration because the defendant's statement that "I will take a blood test" was not a request for an independent test under the implied consent law but was an attempt to designate which test would be administered by the state, which was not an option for the defendant; further, the officer's response to the defendant merely clarified the des-

ignation that the state-administered test would be a breath test and did not mislead the defendant regarding the defendant's right to have an independent chemical test. *Anderton v. State*, 283 Ga. App. 493, 642 S.E.2d 137 (2007).

Trial court properly denied defendant's motion to suppress the results of the defendant's breath test because the officer's reading of the implied consent notice was accurate, the officer asked whether defendant consented, the officer told the defendant to answer yes or no, and the officer's statement, that "as long as you continue to be cool and be cooperative, I'll make the process go by real quick for you," was not coercive or deceptively misleading and did not render the defendant incapable of making an informed decision about whether to submit to the breath test. *Miller v. State*, 317 Ga. App. 504, 731 S.E.2d 393 (2012).

Admissibility of other evidence obtained at roadblocks. — In a prosecution for driving under the influence, evidence obtained at a roadblock set up to check for driver's licenses and intoxicated drivers was admissible because the roadblock was legitimate and the defendant's detention at the roadblock did not constitute an arbitrary, random stop or an unreasonable seizure. *White v. State*, 233 Ga. App. 276, 503 S.E.2d 891 (1998).

Suppression motion erroneously granted. — Because a police officer possessed sufficient information regarding both the defendants via a police dispatcher, who was relaying information from a 9-1-1 caller, and after signaling for the defendants to pull the vehicle over, the officer observed both the defendants switch places, the officer observed sufficient and particular facts to investigate both men for driving under the influence; hence, the trial court erroneously ordered suppression of the evidence obtained from the resulting traffic stop. *State v. Bingham*, 283 Ga. App. 468, 641 S.E.2d 663 (2007).

Order granting the defendant's motion to suppress evidence at the defendant's trial for DUI-less safe driving, O.C.G.A. § 40-6-391(a)(1), was error because, contrary to the trial court's findings, the arresting officer's observations of the defen-

dant's odor of alcohol, bloodshot and watery eyes, unsteadiness, and the defendant's positive alco-sensor test, were sufficient to support a finding of impairment; the officer also testified that, based on the officer's observations and experience, the officer was of the opinion that the defendant was a less safe driver, which was evidence showing that the defendant was a less safe driver. The state was not required to prove that the defendant committed an unsafe act in order to show it was less safe for the defendant to drive. *State v. Burke*, 298 Ga. App. 621, 680 S.E.2d 658 (2009).

Suppression motion properly granted. — Because the evidence sufficiently showed that the defendant's mental condition was clearly vulnerable, and that the defendant: (1) could not read; (2) had to be forcibly restrained while the consent form was initially being read; (3) was weeping while the remainder of the form was read; and (4) never actually signed the consent form, the trial court properly found that any consent to submit to blood and urine tests was not freely and voluntarily given. Moreover, the proper standard of review on appeal, based on the fact that credibility was an issue, was not a *de novo* standard, but a clearly erroneous standard. *State v. Stephens*, 289 Ga. App. 167, 657 S.E.2d 18 (2008).

Suppression motion properly denied. — In a DUI prosecution, the trial court did not err in denying the defendant's motion to suppress the results of a blood test as the notice given to the defendant by a state trooper under the implied consent law, O.C.G.A. § 40-5-67.1(a), was sufficiently accurate to permit the defendant to make an informed decision about whether to consent to testing, and the evidence failed to show that the defendant requested an independent test. *Collins v. State*, 290 Ga. App. 418, 659 S.E.2d 818 (2008).

With regard to a defendant's conviction for driving under the influence and other related crimes, the trial court properly denied the defendant's motion to suppress field sobriety test results, which the defendant based on being unreasonably detained without receiving the Miranda warnings, as the defendant was not under

arrest and the defendant's detainment while waiting for a second officer to arrive at the scene was not unreasonable nor unnecessary since the first officer who initiated the stop after observing the defendant driving erratically had a suspect in the patrol car. The court also found that the second officer timely gave the defendant the implied consent warnings after the defendant was arrested. *Thomas v. State*, 294 Ga. App. 108, 668 S.E.2d 540 (2008).

With regard to a defendant's convictions for driving under the influence and child endangerment, the trial court properly denied the defendant's motion to suppress evidence of the defendant's intoxication as an officer's insistence that the defendant return outside the defendant's day care facility after bringing children back in after arriving with the children in a vehicle was justified by a reasonable suspicion of criminal activity based on the defendant's failure to call the police regarding a domestic violence incident that occurred on the premises earlier, which indicated that the defendant may have engaged in reckless conduct. Upon talking to the defendant, the officer noticed that the defendant's eyes were glassy and that the defendant was in an overly emotional state, which gave additional justification to the officer to suspect that the defendant was intoxicated. *Johnson v. State*, 299 Ga. App. 474, 682 S.E.2d 601 (2009).

Trial court did not err in denying the defendant's motion to suppress and motion in limine to exclude the defendant's field sobriety test results because the implied consent warning was timely given; a HEAT Unit officer gave the defendant the warning immediately after the defendant's arrest. *Waters v. State*, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

Trial court did not err in denying the defendant's motion to suppress the results of a blood-alcohol-content test that was obtained via the seizure of the defendant's blood samples and pursuant to a search warrant because the warrant was narrowly drafted to seek only the blood samples and medical records from the hospital where the defendant was treated on the night of the accident; even if the warrant could be construed as authorizing a

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broader seizure of all of the defendant's medical records instead of only those relevant to the defendant's treatment related to the accident, the defendant failed to show that any such broader seizure occurred and, thus, failed to show any harm. *Jones v. State*, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

Identification of driver. — Although a passenger in the defendant's truck claimed that the passenger was the driver in a single vehicle accident, based on a positive identification of the defendant as the driver from a witness, the testimony from the arresting officer about the defendant's injuries, which were consistent with a driver's, and a taped conversation between the defendant and the passenger while they were in the officer's cruiser, there was sufficient evidence upon which any rational trier of fact could have based a verdict of guilty as to the charges; in the conversation in the officer's cruiser, the defendant told the passenger that the passenger should say that the passenger was driving because the defendant would not spend another night in jail, and also said that the passenger should have been driving when the wreck occurred. *Becker v. State*, 280 Ga. App. 97, 633 S.E.2d 436 (2006).

Failure to produce evidence of marijuana usage. — Defendant's conviction for driving under the influence was reversed since the state's failure to produce evidence of marijuana usage in a "written scientific report" left the defense counsel at a huge disadvantage in trying to cross-examine the state's witness as to the implications of test results and the formation of the witness's opinion based upon the results. *Durden v. State*, 187 Ga. App. 154, 369 S.E.2d 764, *aff'd*, 258 Ga. 720, 375 S.E.2d 610 (1988).

Combined alcohol and drugs conviction. — Defendant who was acquitted of driving under the influence of drugs, and as to whom the court directed a verdict of "not guilty" of driving under the influence of alcohol, could nonetheless be found guilty of driving under the combined influence of drugs and alcohol, arising from the same incident, since the

arresting officer testified that the defendant refused to submit to a chemical test of defendant's blood, defendant had glassy and bloodshot eyes, and that the defendant tested positive for alcohol on the alco-sensor and for drugs using two field sobriety eye tests. *Mendoza v. State*, 196 Ga. App. 627, 396 S.E.2d 576 (1990).

Golf cart was a vehicle. — Because: (1) O.C.G.A. § 40-6-391(a), by the statute's plain language, applied to any moving vehicle, and, a golf cart was a "vehicle" within the meaning of O.C.G.A. § 40-1-1(75); (2) the defendant stipulated at trial to driving the golf cart in Fayette County, making such a "moving vehicle" within the scope of O.C.G.A. § 40-6-391(a), and to being under the influence of alcohol while doing so; and (3) under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia, whether on a street, highway, or private property, the defendant's DUI conviction was upheld on appeal. *Simmons v. State*, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

Evidence sufficient to support conviction of driving under influence. — See *Lawrence v. State*, 157 Ga. App. 264, 277 S.E.2d 60 (1981); *Fuller v. State*, 166 Ga. App. 734, 305 S.E.2d 463 (1983); *Fuller v. State*, 169 Ga. App. 468, 313 S.E.2d 745 (1984); *Collins v. State*, 177 Ga. App. 758, 341 S.E.2d 288 (1986); *Pryor v. State*, 182 Ga. App. 79, 354 S.E.2d 690 (1987); *Daugherty v. State*, 182 Ga. App. 730, 356 S.E.2d 902 (1987); *Schofill v. State*, 183 Ga. App. 251, 358 S.E.2d 651 (1987); *Flanders v. State*, 188 Ga. App. 98, 371 S.E.2d 918 (1988); *Grizzard v. State*, 188 Ga. App. 303, 372 S.E.2d 683 (1988); *Campbell v. State*, 189 Ga. App. 303, 375 S.E.2d 654 (1988); *Clark v. State*, 192 Ga. App. 718, 386 S.E.2d 379 (1989); *Rustin v. State*, 192 Ga. App. 775, 386 S.E.2d 535 (1989); *Ussery v. State*, 195 Ga. App. 394, 393 S.E.2d 522 (1990); *Stanley v. State*, 195 Ga. App. 706, 394 S.E.2d 785 (1990); *Mickey v. State*, 196 Ga. App. 895, 397 S.E.2d 148 (1990); *Hudson v. State*, 261 Ga. 414, 405 S.E.2d 495 (1991); *Austin v. State*, 200 Ga. App. 91, 406 S.E.2d 500, *cert. denied*, 200 Ga. App. 895, 406 S.E.2d 500 (1991); *Mullis v. State*, 201 Ga. App. 75, 410 S.E.2d 182 (1991); *Laminack v.*

State, 201 Ga. App. 663, 411 S.E.2d 895 (1991); *Gordon County Farms v. Edwards*, 204 Ga. App. 770, 420 S.E.2d 607 (1992); *Bryant v. State*, 204 Ga. App. 856, 420 S.E.2d 801 (1992); *Butts v. City of Peachtree City*, 205 Ga. App. 492, 422 S.E.2d 909 (1992); *Conner v. State*, 205 Ga. App. 564, 422 S.E.2d 872 (1992); *Lanier v. City of Manchester*, 205 Ga. App. 597, 423 S.E.2d 30 (1992); *King v. State*, 205 Ga. App. 825, 423 S.E.2d 429 (1992); *Rylee v. State*, 210 Ga. App. 314, 436 S.E.2d 52 (1993); *Harris v. State*, 210 Ga. App. 366, 436 S.E.2d 231 (1993); *Moon v. State*, 211 Ga. App. 559, 439 S.E.2d 559 (1993); *Schoicket v. State*, 211 Ga. App. 636, 440 S.E.2d 65 (1994); *Marsh v. State*, 211 Ga. App. 751, 440 S.E.2d 478 (1994); *Fouche v. State*, 211 Ga. App. 875, 440 S.E.2d 758 (1994); *Leigner v. State*, 213 Ga. App. 871, 446 S.E.2d 770 (1994); *Shelton v. State*, 214 Ga. App. 166, 447 S.E.2d 115 (1994); *Lewis v. State*, 214 Ga. App. 830, 449 S.E.2d 535 (1994); *Crawford v. City of Forest Park*, 215 Ga. App. 234, 450 S.E.2d 237 (1994); *Shelton v. State*, 216 Ga. App. 634, 455 S.E.2d 304 (1995); *Parrish v. State*, 216 Ga. App. 832, 456 S.E.2d 283 (1995); *Torrance v. State*, 217 Ga. App. 562, 458 S.E.2d 495 (1995); *Keef v. State*, 220 Ga. App. 134, 469 S.E.2d 318 (1996); *Lee v. State*, 222 Ga. App. 389, 474 S.E.2d 281 (1996); *Hill v. State*, 223 Ga. App. 493, 478 S.E.2d 406 (1996); *Burrell v. State*, 225 Ga. App. 264, 483 S.E.2d 679 (1997); *Tanner v. State*, 225 Ga. App. 702, 484 S.E.2d 766 (1997); *McClain v. State*, 226 Ga. App. 714, 487 S.E.2d 471 (1997); *Apperson v. State*, 225 Ga. App. 804, 484 S.E.2d 739 (1997); *Kovacs v. State*, 227 Ga. App. 870, 490 S.E.2d 539 (1997); *Piast v. State*, 230 Ga. App. 222, 495 S.E.2d 875 (1998); *Reynolds v. State*, 230 Ga. App. 458, 496 S.E.2d 474 (1998); *Horne v. State*, 237 Ga. App. 844, 517 S.E.2d 74 (1999); *Davidson v. State*, 237 Ga. App. 580, 516 S.E.2d 90 (1999); *Walker v. State*, 239 Ga. App. 831, 521 S.E.2d 861 (1999); *O'Brien v. State*, 242 Ga. App. 344, 529 S.E.2d 657 (2000); *Vaughn v. State*, 243 Ga. App. 816, 534 S.E.2d 513 (2000); *Duvall v. State*, 250 Ga. App. 87, 550 S.E.2d 479 (2001); *Slinkard v. State*, 259 Ga. App. 755, 577 S.E.2d 825 (2003); *In the Interest of A.A.*, 265 Ga. App. 369, 593 S.E.2d 891 (2004).

Under the evidence, the jury was authorized to find that the defendant was operating the defendant's motor truck on a public street while under the influence of an intoxicating liquor. *Langford v. State*, 69 Ga. App. 619, 26 S.E.2d 385 (1943) (decided under former Code 1933, § 68-307).

Appeals court found the following facts indicated there was sufficient evidence to convict a defendant driver of driving under the influence (DUI) since the defendant: (1) after being stopped for going through a red light, told the officer the defendant was talking on a cell phone; (2) had a flushed face and smelled like beer; (3) could not say certain sequences of the alphabet according to instructions; (4) admitted to drinking beer; (5) refused to submit to field sobriety tests but had a slurred voice when telling the officer why; and (6) had a cup of beer in the car. *Lanwehr v. State*, 265 Ga. App. 359, 593 S.E.2d 897 (2004).

Evidence was sufficient to support conviction of per se driving under the influence under O.C.G.A. § 40-6-391(a)(5) when, inter alia, an officer saw the defendant's truck weaving and straddling two lanes, the defendant smelled of an alcoholic beverage, the defendant's speech was slurred, the defendant's eyes were red and bloodshot, when the defendant failed three field sobriety tests, and when the blood alcohol breath tests showed alcohol concentrations of .164 and .156; the fact that the jury acquitted the defendant of driving under the influence to the extent that it is less safe for a person to drive and improper lane change did not invalidate the verdict since Georgia did not recognize an inconsistent verdict rule. *Smith v. State*, 265 Ga. App. 756, 596 S.E.2d 13 (2004).

Sufficient evidence supported convictions of driving under the influence of alcohol under the former version of O.C.G.A. § 40-6-391 to the extent that the defendant was less safe to drive and driving while having an alcohol concentration of 0.10 grams or more when an officer stopped the defendant after seeing the defendant closely following another car on a highway and weaving, when the defendant had an odor of alcohol, slurred

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speech, bloodshot eyes, and admitted that the defendant had three alcoholic beverages that night, when an alco-sensor indicated positive for alcohol, and breath tests registered .114 and .101 grams of alcohol in the defendant's blood; evidence supporting a per se charge was not insufficient simply because the machine's margin of error brought a breathalyzer test result below the legal limit for blood alcohol content. *Totino v. State*, 266 Ga. App. 265, 596 S.E.2d 749 (2004).

There was sufficient evidence to support the defendant's convictions for driving under the influence of alcohol and obstructing a police officer as the police corporal observed the defendant staggering around the defendant's vehicle, which was parked in the middle of a public street, and driving in violation of the traffic laws, and, after the defendant was stopped, the defendant had a strong odor of alcohol on the defendant's breath, slurred speech, and gave a positive result for consumption of alcohol on the alco-sensor. *Monas v. State*, 270 Ga. App. 50, 606 S.E.2d 80 (2004).

Defendant's conviction for violation of O.C.G.A. § 40-6-391(a)(1) was supported by sufficient evidence as the state was not required to prove that the defendant committed an unsafe act, but rather, the state needed only to prove beyond a reasonable doubt that the defendant was under the influence of alcohol to the degree that rendered the defendant a less safe driver; the trooper who observed the defendant testified that the trooper believed the defendant was a less than safe driver, based on the defendant's condition, and there was also testimony as to the defendant's blood alcohol level and how it affected the defendant's reaction time. *Overton v. State*, 270 Ga. App. 285, 606 S.E.2d 306 (2004).

Motion to dismiss "driving under the influence" charges was properly denied because the defendant was not charged with an offense under O.C.G.A. § 40-6-391(a)(4), but was charged with violations under O.C.G.A. §§ 40-6-391(a)(1) and 40-6-391(a)(2); while the defendant's drug test results were suppressed, there was evidence to

support conviction under O.C.G.A. § 40-6-391(a)(1). *Harris v. State*, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Evidence supported the defendant's conviction for DUI as a less safe driver, in violation of O.C.G.A. § 40-6-391(a)(1), after a police officer observed the defendant's vehicle traveling without the vehicle's headlights on at night, the defendant failed to heed the officer's hand motions, the defendant drove through a red light, and the defendant failed to yield to oncoming traffic, and upon being stopped, the officer smelled alcohol on the defendant, who refused to take voluntary field sobriety tests or the required state breath test. *Drogan v. State*, 272 Ga. App. 645, 613 S.E.2d 195 (2005).

Evidence supported the defendant's driving under the influence conviction because: (1) the defendant's erratic, dangerous behavior more than showed an impaired state; (2) the defendant's refusal to submit to field sobriety tests or to state-administered chemical tests was circumstantial evidence of intoxication; and (3) a police officer who observed the defendant testified that, in the officer's opinion, the defendant was intoxicated such that it was less safe to drive. *Jones v. State*, 273 Ga. App. 192, 614 S.E.2d 820 (2005).

In a prosecution for vehicular homicide based on the defendant's impaired driving, the fact that the defendant's expert was unable to conclude from the state's testing whether the defendant was impaired did not mean the state failed to prove the defendant's impairment as the state's expert testified that use of the drugs found in the defendant's system after an accident would have made the defendant a less safe driver so a jury could find beyond a reasonable doubt that the defendant was impaired. *McClure v. State*, 273 Ga. App. 751, 615 S.E.2d 856 (2005).

Evidence supported the defendant's conviction for driving under the influence of alcohol-less safe driver because the defendant drove erratically, had a strong odor of alcohol, had glassy eyes, had slurred speech, and repeatedly failed to respond to questions posed by the officer; the defendant also refused to submit to state-administered chemical testing after

being read the implied consent warning. *Alewine v. State*, 273 Ga. App. 629, 616 S.E.2d 472 (2005).

Observations by an officer that the defendant's vehicle was weaving in traffic, that portions of the car actually crossed over into the adjacent lane of traffic, that there was an odor of an alcoholic beverage and that the defendant had red, watery eyes, and that the defendant failed three sobriety tests provided sufficient evidence to support a conviction of driving under the influence as a less safe driver. *Kuehne v. State*, 274 Ga. App. 668, 618 S.E.2d 702 (2005).

Evidence was sufficient to support the defendant's convictions for driving under the influence, vehicular homicide, reckless driving, and other charges as the evidence showed that the defendant was caught trying to take merchandise from a store, and then struck and killed the victim as the defendant left the store parking lot and turned on to a highway at a time when the defendant admittedly was under the influence of drugs. *Cromartie v. State*, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

Evidence was sufficient to convict a defendant of driving under the influence of alcohol to the extent it was less safe for the defendant to drive in violation of O.C.G.A. § 40-6-391(a)(1) based on the defendant's indicia of intoxication, the defendant's driving, the defendant's refusal to submit to sobriety tests, and the officer's opinion that the defendant was intoxicated to the extent that the defendant was a less safe driver. *Hoffman v. State*, 275 Ga. App. 356, 620 S.E.2d 598 (2005).

Sufficient evidence supported the defendant's conviction of driving under the influence to the extent that the defendant was less safe in violation of O.C.G.A. § 40-6-391(a)(1); the defendant was weaving down a street when the defendant struck a parked car and witnesses, including a police officer, testified that the defendant exhibited an indicia of intoxication. *Dotson v. State*, 276 Ga. App. 418, 623 S.E.2d 252 (2005).

Evidence was sufficient to support a conviction for driving under the influence of alcohol despite the defendant's contention that the defendant was not driving the car when the officer saw the car speed-

ing; the jury was authorized to reject that testimony in favor of that offered by the state. *Morgan v. State*, 277 Ga. App. 670, 627 S.E.2d 413 (2006).

Driving under the influence of marijuana conviction was upheld on appeal as: (1) the court rejected the defendant's claim that the conviction had to be reversed merely because the state produced no evidence of marijuana in the defendant's system, given that the refusal to submit to a test of urine or blood created an inference that these tests would have shown the presence of a prohibited substance; and (2) the evidence, when combined with the defendant's poor performance on the field sobriety tests, bloodshot eyes, unsteadiness while exiting the car, and the odor of marijuana, adequately supported this conviction; moreover, the fact that the trial court found the defendant not guilty of a marijuana possession charge did not require a different result as Georgia abolished the inconsistent verdict rule. *Graves v. State*, 280 Ga. App. 420, 634 S.E.2d 186 (2006).

Convictions against the defendant for driving under the influence of alcohol to the extent that it was less safe for the defendant to drive and possession of an open container of alcohol in violation of O.C.G.A. §§ 40-6-391(a)(1) and 40-6-253(b)(1)(B) were supported by sufficient evidence when police officers who responded to a call observed the defendant driving into a parking lot with a damaged car, the defendant screamed and cried when asked what had happened and if the defendant was okay, there was a strong odor of alcohol, the defendant had bloodshot and watery eyes, admitted to having had "too many," and the defendant refused to take field sobriety tests or a chemical breath test; further, a search of the vehicle after the defendant's arrest revealed open bottles of wine cooler. *Crenshaw v. State*, 280 Ga. App. 568, 634 S.E.2d 520 (2006).

After a review of the evidence surrounding the auto accident which the defendant caused while under the influence of methamphetamine, with the defendant's four-year-old son as a passenger, and in which the defendant rear-ended the driver in front of the defendant causing that

Evidence (Cont'd)

driver to become paralyzed from the neck down, when coupled with the testimony of two law enforcement officers who were at the scene and described the defendant's erratic behavior after the collision, the defendant's serious injury by vehicle, driving under the influence of methamphetamine, and endangering a child by driving under the influence convictions were supported by the evidence. *Duncan v. State*, 281 Ga. App. 270, 635 S.E.2d 875 (2006).

Even in the absence of forensic evidence as to a defendant's blood alcohol concentration, the defendant's convictions for reckless driving and driving under the influence of alcohol to the extent that it was less safe to drive were supported by evidence of the defendant's erratic driving, including following another vehicle too closely, and of the defendant's slurred speech, staggering gait, and flight of irrational belligerence, combined with the detection of a strong odor of alcohol emanating from the defendant; the witness testimony was certainly sufficient to authorize any rational trier of fact to conclude beyond a reasonable doubt that the defendant was guilty of the charged offenses. *Rutland v. State*, 282 Ga. App. 728, 639 S.E.2d 628 (2006).

There was sufficient evidence to find the defendant guilty of driving under the influence of alcohol to the extent that the defendant was a less safe driver; the officer who stopped the defendant at a roadblock testified that the defendant had a strong odor of alcohol about the defendant, that the defendant's eyes were bloodshot, that the defendant was slack-jawed, and that the defendant's speech was slurred; the defendant told the officer that the defendant had consumed two alcoholic drinks. *Gamble v. State*, 283 Ga. App. 326, 641 S.E.2d 556 (2007).

Although defense counsel in a DUI case under O.C.G.A. § 40-6-391(a)(1) was ineffective in tendering a report into evidence that contained the otherwise inadmissible numerical result of an alco-sensor test, the defendant was not prejudiced; evidence of guilt, including the fact that the defendant was passed out behind the wheel in a left turn lane with the car in

gear, the fact that the defendant had to be roused from sleep and was disoriented, the defendant's admission to drinking, and the defendant's failing a field sobriety test was overwhelming. *Hopkins v. State*, 283 Ga. App. 654, 642 S.E.2d 356 (2007).

Trial court did not err in denying the defendant's motion to suppress evidence seized by a state trooper who was lawfully investigating a serious injury accident the defendant was involved in as evidence the trooper found, specifically, some steel wool and prescription drugs, when coupled with other information the trooper possessed concerning the nature and cause of the crash, provided sufficient probable cause for the trooper to believe that the defendant was driving under the influence; further, the appeals court agreed that the evidence would have been inevitably discovered. *Cunningham v. State*, 284 Ga. App. 739, 644 S.E.2d 878 (2007).

Deputy had probable cause to arrest a defendant for DUI independent of field sobriety tests; when the deputy arrived on the scene and before the deputy conducted the tests, the deputy was told by another officer that the defendant had been driving on the wrong side of the road and had been drinking, the deputy noticed that the defendant was unsteady, nervous, and smelled strongly of alcohol, and the defendant admitted to having been drinking two or three hours before. *Tune v. State*, 286 Ga. App. 32, 648 S.E.2d 423 (2007).

Defendant's DUI conviction was upheld on appeal based on the investigating officer's testimony that the defendant: (1) sped through a residential area; (2) crossed the centerline in the roadway; (3) drove on the wrong side of the road; (4) drifted in and out of a marked lane of traffic; (5) smelled strongly of alcohol; (6) had a red face, bloodshot and watery eyes, and slurred speech; (7) was unsteady; and (8) failed three field sobriety tests. *McDevitt v. State*, 286 Ga. App. 120, 648 S.E.2d 481 (2007).

Given the arresting officer's observations, the defendant's failure to maintain a lane of driving, the evidence presented surrounding the defendant's arrest, and the defendant's failed field sobriety and breath tests, sufficient evidence was presented to support the DUI convictions;

thus, a new trial based on the insufficiency of the evidence was properly denied. *Trull v. State*, 286 Ga. App. 441, 649 S.E.2d 571 (2007).

Defendant's DUI conviction was upheld on appeal as the evidence of guilt, specifically: smelling strongly of alcohol, having trouble walking and speaking, fumbling with a wallet, a half-empty can of beer in the defendant's truck, hiding the truck's keys and a license in the bathroom, the officer having just seen the defendant driving, despite the defendant's claim to the contrary, and the multiple similar transactions, was overwhelming. *Caraway v. State*, 286 Ga. App. 592, 649 S.E.2d 758 (2007), cert. denied, 2007 Ga. LEXIS 686 (Ga. 2007).

Sufficient evidence existed to support a defendant's conviction for DUI when there was evidence that the defendant had been drinking via an officer's observation of the defendant running a red light, speeding, and failing to maintain the lane, and the defendant refused to submit to an alco-sensor test; further, evidence that a strong smell of alcohol came from the defendant and that four field sobriety tests were conducted indicated that the defendant was impaired. *Horne v. State*, 286 Ga. App. 712, 649 S.E.2d 889 (2007), cert. denied, 2007 Ga. LEXIS 744 (Ga. 2007).

State's evidence, both direct and circumstantial, was sufficient to uphold the defendant's conviction of vehicular homicide and that the defendant violated O.C.G.A. § 40-6-391 by driving while under the influence of alcohol as the evidence established the following: testimony of eyewitnesses and of the trooper who investigated the accident established that the defendant was driving erratically and dangerously prior to the collision; the jury was entitled to consider the defendant's admitted flight from the scene as evidence of the defendant's guilt; the defendant admitted that there were two open bottles of liquor in the defendant's car prior to the fatal crash and that the defendant had an alcohol problem on that day. *Merritt v. State*, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

Defendant's conviction for driving under the influence of alcohol to the extent

that it was less safe to drive was supported by the defendant's driving 70 miles per hour in a 45-miles-per-hour zone; an officer's description of the defendant's odor of alcohol, bloodshot eyes, and lack of balance; the defendant's performance on field sobriety and breath tests; the defendant's testimony that the defendant drank six alcoholic drinks over the evening; and the officer's opinion that the defendant was under the influence. *Yglesia v. State*, 288 Ga. App. 217, 653 S.E.2d 823 (2007).

Trial court properly denied a motion to suppress the defendant's breath test results as the officer that stopped the defendant had probable cause to arrest based on: (1) the defendant's admission to consuming alcohol; (2) the arresting officer's detection of alcohol on both the defendant's breath and the defendant's person; and (3) the fact that impaired driving ability was not an element under O.C.G.A. § 40-6-391(k)(1). *Dodds v. State*, 288 Ga. App. 231, 653 S.E.2d 828 (2007), cert. denied, 2008 Ga. LEXIS 335 (Ga. 2008).

Defendant's bloodshot, watery eyes, admission to drinking, the positive result from an alco-sensor test, and an officer's smelling alcohol on the defendant's breath provided probable cause to arrest the defendant for driving under the influence (DUI). Moreover, it appeared that the arrest had been not for DUI (less safe) but for DUI (underage per se) for which the officer had ample probable cause in light of the above factors as well as the low per se limit and the officer's extensive experience in this area. *Kellogg v. State*, 288 Ga. App. 265, 653 S.E.2d 841 (2007), cert. denied, No. S08C0458, 2008 Ga. LEXIS 229 (Ga. 2008).

Trial court properly convicted a defendant of driving under the influence, less safe, in violation of O.C.G.A. § 40-6-391(a)(1), after a bench trial because the evidence showed that: (1) an officer saw the defendant drunk earlier in the evening while responding to a dispute between neighbors; (2) the defendant admitted to drinking; and (3) the defendant admitted to driving the defendant's vehicle while drunk from the defendant's home to a lake home. Any error in the charging instrument was deemed waived on appeal as the defendant should have

Evidence (Cont'd)

addressed any purported error by a special demurrer and, likewise, the defendant failed to file a motion to suppress challenging the officers' entry into the defendant's dwelling without authority; thus, that issue was deemed waived. *Pruitt v. State*, 289 Ga. App. 307, 656 S.E.2d 920 (2008).

Sufficient evidence supported convictions for driving under the influence of drugs to the extent of being a less safe driver under O.C.G.A. § 40-6-391(a)(2) in that: (1) an officer saw the defendant's vehicle weaving, tailgating, and going over 80 miles per hour; (2) the defendant spoke slowly, was unsteady, had blood-shot, glassy eyes, and performed poorly on field sobriety tests; and (3) the defendant's urine tested positive for cocaine, marijuana, and six prescription drugs. *Cornwell v. State*, 283 Ga. 247, 657 S.E.2d 195 (2008).

There was sufficient evidence supporting convictions of driving under the influence of alcohol to the extent that it was less safe to drive and of driving with an unlawful blood-alcohol concentration. Although the defendant claimed that the defendant drank only while the defendant's truck was parked, officers found no containers of alcohol in the truck, and the testimony as to the manner in which the truck was parked authorized a finding that the defendant had been driving the truck erratically; furthermore, a test showing the defendant's blood alcohol level of 0.198 was administered within three hours of the time the defendant testified that the defendant began drinking. *Dorris v. State*, 291 Ga. App. 716, 662 S.E.2d 804 (2008).

Evidence that a defendant's vehicle left the road, traversed a drainage ditch, and became lodged between two trees, along with evidence that the defendant was unsteady on the defendant's feet, had extremely dilated pupils, had a strong odor of alcohol about the defendant's person, and admitted to having two beers was sufficient to support the defendant's convictions for failure to maintain a lane and driving under the influence of alcohol to the extent it was less safe for the defen-

dant to drive. *Chancellor v. State*, 284 Ga. 66, 663 S.E.2d 203 (2008).

Sufficient evidence supported defendant's conviction for driving under the influence of an intoxicating substance since the evidence established that the defendant purchased two cans of an aerosol computer cleaning product and approximately nine minutes later drove a vehicle over a curb and a sidewalk, through the grass in a straight line, and across a street, striking a mailbox and a car before coming to rest in an open field. When an officer approached the defendant and a passenger, the officer immediately noticed symptoms that, based on the officer's training and experience, were consistent with inhalant use. *Castaneda v. State*, 292 Ga. App. 390, 664 S.E.2d 803 (2008).

Testimony from the driver of a van struck by a defendant's vehicle, combined with the defendant's admission regarding drinking, the defendant's failed field sobriety tests, and a breath test that showed the defendant had a blood alcohol level of .146 was sufficient to support a jury's conviction of the defendant for driving under the influence of alcohol (less safe) under O.C.G.A. § 40-6-391(a)(1). *Thrasher v. State*, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Because a police officer observed the defendant make a turn even though the arrows indicating that turn remained red, the valid traffic stop was not impermissibly prolonged pending the arrival of a second officer due to the first officer's incapacity to smell; accordingly, the evidence was sufficient to sustain the defendant's conviction for driving under the influence and failing to obey a traffic control device under O.C.G.A. §§ 40-6-20 and 40-6-391. *Peterson v. State*, 294 Ga. App. 128, 668 S.E.2d 544 (2008).

Evidence was sufficient to convict a defendant of DUI per se under O.C.G.A. § 40-6-391(a)(5) because as the defendant did not consume any alcohol between the time of the accident and the arrival of the police, after which a breath test revealed the defendant's blood alcohol content to be .245, the jury was authorized to find that the defendant's blood alcohol level was .08 or more when the defendant drove a van

into the ditch. *Reese v. State*, 296 Ga. App. 186, 674 S.E.2d 68 (2009).

Because a police officer's actions, including reading the defendant the implied consent warnings in O.C.G.A. § 40-5-67.1(g)(2)(B) multiple times, were reasonable and the procedure utilized was fair, the results of a toxicology report, indicating that 0.24 milligrams per liter of benzoylecgonine, a metabolite of cocaine, was present in the defendant's blood was sufficient for the jury to find the defendant guilty of violating O.C.G.A. § 40-6-391(a)(6). *Page v. State*, 296 Ga. App. 431, 674 S.E.2d 654 (2009).

With regard to a defendant's convictions for improper lane change, serious injury by vehicle while driving under the influence, and misdemeanor obstruction of an officer, there was sufficient evidence to support the convictions. The conviction was supported by an officer's testimony that the defendant attempted to leave the scene several times, and the evidence of the defendant's vehicle passenger suffering a severe injury to the left eye. *Wells v. State*, 297 Ga. App. 153, 676 S.E.2d 821 (2009).

Evidence was sufficient to sustain convictions of driving under the influence (less safe and per se), and vehicular homicide as a result under circumstances in which the defendant admitted to drinking two beers on the morning of a fatal accident, the defendant was seen with beer that morning, the defendant was not aware whether the children in the defendant's vehicle were buckled in as was required by law, and the victim probably was not buckled in, the defendant had a .235 blood alcohol level shortly after the accident, the defendant smelled of the odor of alcohol, and the defendant was unable to control the defendant's automobile, all of which led to the death of a child; it was for the jury to decide the reasonableness of the hypotheses that the defendant drove off the road because of problems with the tires on the vehicle. *Daniel v. State*, 298 Ga. App. 245, 679 S.E.2d 811 (2009).

Conviction of driving under the influence of drugs to the extent it was less safe to drive, O.C.G.A. § 40-6-391(a)(2), was proper because the state was not required

to present the results from scientific testing of blood or urine to prove a charge under § 40-6-391(a)(2); further, the defendant admitted to having smoked marijuana earlier that day, and an alcosensor test performed on the defendant was negative. Finally, the arresting officer testified that, based upon years of experience observing people who were under the influence of marijuana and all of the officer's observations in this case, it was the officer's opinion that the defendant was under the influence of marijuana to the extent that the defendant was a less safe driver. *Richardson v. State*, 299 Ga. App. 365, 682 S.E.2d 684 (2009).

Officer had reasonable suspicion to conduct field sobriety tests based on the smell of alcohol emanating from a defendant, the defendant's watery, bloodshot eyes, and the defendant's admission to drinking alcohol. The failure of three field sobriety tests supplied the officer with probable cause to arrest the defendant, and all of this evidence, along with the defendant's refusal to submit to a chemical test of the defendant's blood and breath, was sufficient to support a conviction for driving under the influence. *Blankenship v. State*, 301 Ga. App. 602, 688 S.E.2d 395 (2009).

Evidence was sufficient to authorize a jury to find the defendant guilty beyond a reasonable doubt of driving under the influence of alcohol to the extent that it was less safe for the defendant to drive; a police officer, who had extensive experience and training in DUI detection, testified that in the officer's opinion, the defendant was under the influence of alcohol to the extent the defendant was less safe to drive, based on the officer's observation of the defendant's unsteadiness, flushed face, bloodshot, watery, glazed eyes, confused mental state, mumbled speech, and the strong odor of alcohol about the defendant's body as well as the statement of a passenger that the defendant had been drinking beer a short time before. The defendant's refusal to submit to field sobriety tests, an alco-sensor test, and the state-administered breath test was admissible as circumstantial evidence of intoxication and, together with other evidence, would support an inference that the defendant was an impaired driver.

Evidence (Cont'd)

Crusselle v. State, 303 Ga. App. 879, 694 S.E.2d 707 (2010).

Evidence presented by the state was sufficient for any rational trier of fact to find the defendant guilty of driving under the influence less safe beyond a reasonable doubt because the defendant's consumption of alcohol was established by the defendant's own testimony, the positive result from the alcosensor test, evidence that the defendant's blood alcohol content was between 0.073 and 0.085 an hour after the incident, the smell of alcohol emanating from the defendant, and the defendant's watery and bloodshot eyes. Moreover, the evidence that the defendant was speeding constituted evidence that the defendant's driving was impaired and the officer testified that in the officer's opinion, the defendant was under the influence of alcohol to the extent that it was less safe for the defendant to drive. A police officer may give opinion testimony as to the state of sobriety of a driving under the influence (DUI) suspect and whether the suspect was under the influence to the extent it made the suspect less safe to drive; further, it was well-settled that DUI could be proved solely by circumstantial evidence and it was not necessary that the circumstantial evidence exclude every other hypothesis except that of guilt. Jaffray v. State, 306 Ga. App. 469, 702 S.E.2d 742 (2010).

Evidence was sufficient to support a defendant's convictions for driving under the influence of alcohol (DUI) per se and DUI less safe in violation of O.C.G.A. § 40-6-391(a)(5) and (a)(1), respectively, because the arresting officer smelled alcohol, the defendant admitted drinking and wrecking the defendant's motorcycle, and the defendant's breath test result was 0.152 grams. Jacobson v. State, 306 Ga. App. 815, 703 S.E.2d 376 (2010), cert. denied, No. S11C0498, 2011 Ga. LEXIS 582 (Ga. 2011).

Evidence of the defendant's erratic driving, some of which was recorded by a deputy's dashboard camera, the defendant's failing field sobriety tests, the defendant's admission that the defendant had been drinking, and the defendant's

Intoxilyzer 5000 result exceeding .08 grams, were sufficient to support the defendant's conviction of driving under the influence of alcohol under O.C.G.A. § 40-6-391(a)(5). Miller v. State, 307 Ga. App. 701, 706 S.E.2d 94 (2011).

Evidence was more than sufficient to establish not only that the defendant had been drinking, but that the defendant was a less safe driver because the defendant was impaired. During the trial: (1) a truck driver testified that the truck driver called 9-1-1 to report that the defendant was driving erratically; (2) a police officer, who responded to the call, testified that the officer videotaped the erratic driving and stopped the defendant; (3) the videotape showed the erratic driving; (4) the officer testified and the video showed that, when the defendant exited the vehicle, the defendant was unsteady on the defendant's feet; (5) the officer testified that the defendant's speech was slightly slurred, the defendant's eyes were bloodshot and glassy, and that a strong odor of alcohol was coming from the defendant's breath or person; (6) the officer testified that the defendant mentioned that the defendant had consumed a couple of beers or drinks; (7) the officer testified that the defendant unsuccessfully attempted to perform standardized field sobriety tests; and (8) the defendant agreed to blow into an alcosensor, which indicated positive for alcohol. Schenck v. State, 307 Ga. App. 890, 706 S.E.2d 218 (2011).

Assuming that the defendant's post-verdict motion for judgment notwithstanding the verdict was a motion for new trial, it was, nevertheless, wholly without merit because the evidence was sufficient to convict the defendant of driving under the influence (to the extent that the defendant was a less-safe driver, O.C.G.A. § 40-6-391(a)(1)) because a police officer administered two field-sobriety tests, and defendant exhibited clues of impairment on each. Masood v. State, 313 Ga. App. 549, 722 S.E.2d 149 (2012).

Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol,

O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, O.C.G.A. § 40-6-391(a)(1), because the state presented evidence that the defendant had a blood-alcohol content of nearly double the legal limit at or near the time the defendant veered across three lanes of traffic and collided with a driver's pick-up truck, which resulted in the death of the driver, a passenger, and the passenger's unborn child. *Jones v. State*, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

Sufficient evidence supported defendant's conviction on three counts of endangering a child under the age of 14 while driving under the influence, in violation of O.C.G.A. § 40-6-391(a)(1), because defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a clear plastic bottle containing 77 proof alcohol was found on the floorboard, and the defendant's blood alcohol content was 0.207 grams. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

The evidence was sufficient for the jury to find the defendant guilty beyond a reasonable doubt of driving under the influence (DUI) less safe in violation of O.C.G.A. § 40-6-391(a)(1) because upon questioning, the defendant told the officer that the defendant had been drinking, an alco-sensor administered to the defendant tested positive for alcohol, and a second officer smelled the odor of alcohol on the defendant's breath. *Cordy v. State*, 315 Ga. App. 849, 729 S.E.2d 13 (2012).

Evidence that the defendant was found in the driver's seat of the irregularly parked vehicle with the keys in the ignition, the defendant was the sole occupant of the vehicle, there was no evidence another party drove the vehicle to the location, the defendant failed field sobriety tests, and the defendant had a blood-alcohol concentration of .212 grams according to intoxilyzer tests was sufficient to support the defendant's conviction for driving with an unlawful alcohol concentration. *Stallings v. State*, 319 Ga. App. 587, 737 S.E.2d 592 (2013).

Defendant's conviction for DUI was affirmed because the officer's testimony was

sufficient to prove beyond a reasonable doubt that the defendant was under the influence of alcohol. The officer's opinion testimony that the defendant was under the influence of alcohol was direct evidence of the defendant's guilt; thus, the reasonable hypothesis rule did not apply. *Hinton v. State*, 319 Ga. App. 673, 738 S.E.2d 120 (2013).

Witnesses' observations of the defendant's slurred speech, bloodshot eyes, lack of balance, odor of alcohol, and repeated collisions with the victim's truck was sufficient to support the defendant's conviction for driving under the influence to the extent it was less safe for the defendant to drive. *Simmons v. State*, 321 Ga. App. 743, 743 S.E.2d 434 (2013).

Evidence was sufficient to support the defendant's conviction for DUI per se as an officer observed that the defendant exited the driver's side door of the vehicle, appeared nervous, had glassy, bloodshot eyes, and had a very strong odor of alcohol about the defendant's person. A second officer made the same observations and performed a breath test, which registered positive for the presence of alcohol. *Daniels v. State*, 321 Ga. App. 748, 743 S.E.2d 440 (2013).

Evidence that the defendant was found in the driver's seat of a vehicle that had the vehicle's flashers on and was stopped in the lane of travel, the defendant was the sole occupant of the vehicle, the defendant failed field sobriety tests, and the defendant had a blood-alcohol concentration that was double the legal limit supported the conviction for DUI per se. *Green v. State*, 323 Ga. App. 832, 748 S.E.2d 479 (2013).

Breath test taken by the defendant about an hour after the 911 call about the accident was made and showing a blood alcohol concentration of 0.126 grams was sufficient to support a conviction for driving under the influence of alcohol with an unlawful blood alcohol concentration. *Smith v. State*, 2013 Ga. App. LEXIS 927 (Nov. 15, 2013).

Sufficient evidence supported the defendant's conviction for driving under the influence, less safe, based on the evidence of defendant's refusal to take the state-administered breath test, the smell

Evidence (Cont'd)

of alcohol on the defendant's person, and the defendant's repeated refusals to follow the officer's commands. *Taylor v. State*, 326 Ga. App. 27, 755 S.E.2d 839 (2014).

Evidence supporting verdict of drunken driving. — Evidence supports a verdict of drunken driving when, at the time the troopers arrived at the scene of the alleged crime, the defendant was sitting under the steering wheel of the automobile and attempting to get the car in gear, the motor of the automobile was running, and the automobile rolled backwards when the witness started to get out of the patrol car. *Echols v. State*, 104 Ga. App. 695, 122 S.E.2d 473 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Evidence showing that the defendant was speeding, drove at least a short distance without car headlights, was unruly and belligerent upon arrest, was unsteady, smelled of alcohol, and repeatedly refused to submit to an intoximeter test was sufficient to support a conviction. *Howell v. State*, 179 Ga. App. 632, 347 S.E.2d 358 (1986).

When the state's evidence shows that the defendant was driving under the influence of alcohol (.16 grams percent) at a high rate of speed without any lights, recklessly passed two other vehicles immediately prior to the collision with the victim, and was driving in the wrong lane when the defendant crashed into the victim's car, the evidence is sufficient to enable any rational trier of fact to find that a causal connection existed between the defendant's violation of O.C.G.A. § 40-6-390 or O.C.G.A. § 40-6-391 and the victim's death and thus to find the defendant guilty beyond a reasonable doubt of the offense of homicide by vehicle in the first degree. *McNabb v. State*, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

When the arresting officer testified that there was an odor of alcohol about the car driven by the defendant, that the defendant was unstable on the defendant's feet and the defendant's speech was slurred, and the officer stated that, based on the officer's experience of almost 20 years as a police officer and having observed four or

five hundred people driving under the influence of alcohol, the defendant was under the influence of alcohol and that the defendant's driving ability was impaired as a result of the defendant being under the influence of alcohol, the evidence was sufficient to allow a rational trier of fact to find the defendant guilty beyond a reasonable doubt of driving under the influence of alcohol. *Williams v. State*, 190 Ga. App. 361, 378 S.E.2d 886, cert. denied, 190 Ga. App. 899, 378 S.E.2d 866 (1989).

When a defendant's intoximeter test revealed an alcohol concentration of .26 grams, a rational trier of fact could reasonably conclude that the defendant was guilty beyond a reasonable doubt of driving under the influence of alcohol. *Jones v. State*, 195 Ga. App. 569, 394 S.E.2d 387 (1990).

Superior court did not err in concluding, on de novo review of the evidence presented to the probate court, that the defendant was intoxicated to the extent that the defendant was rendered a less safe driver and in finding the defendant guilty as charged since the where defendant presented no evidence to rebut the presumption raised by evidence that a breath test properly administered to the defendant resulted in a reading of .17 grams. *Bell v. State*, 197 Ga. App. 175, 398 S.E.2d 29 (1990).

Evidence was sufficient to support conviction of driving under the influence after the officer observed only one occupant in the vehicle during the course of a prolonged erratic pursuit and witnessed the removal of the vehicle's sole occupant, whom the officer positively identified as the defendant, when the vehicle stopped. *Hilburn v. State*, 207 Ga. App. 127, 427 S.E.2d 97 (1993).

When the evidence revealed that the defendant had a blood-alcohol concentration of .11 percent within less than an hour after operating a moving vehicle, that the defendant "had glassy eyes" at the time of arrest and that a strong odor of alcohol permeated the vehicle defendant was driving shortly before the defendant's arrest, this evidence and testimony that the defendant consumed alcoholic beverages before defendant's arrest was sufficient to authorize the jury's finding that

the defendant was guilty, beyond a reasonable doubt, of driving under the influence of alcohol in violation of paragraph (a)(1) of O.C.G.A. § 40-6-391. *Anthony v. State*, 211 Ga. App. 622, 441 S.E.2d 70 (1993), overruled on other grounds, *State v. Coleman*, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Direct evidence that the defendant was passed out in the driver's seat behind the wheel of a truck, with the engine running and the lights on and that the truck moved a few inches when the officer roused the defendant, coupled with other circumstantial evidence, was sufficient to support a finding that the defendant was in control of a moving vehicle while intoxicated. *Green v. State*, 214 Ga. App. 664, 448 S.E.2d 758 (1994).

Evidence that the defendant was speeding and abruptly changing lanes while there was marijuana in the defendant's system was sufficient to authorize a jury's finding that the defendant was under the influence of any drug to the extent that it was less safe for the defendant to drive in violation of paragraph (a)(2) of O.C.G.A. § 40-6-391 beyond a reasonable doubt. *Grant v. State*, 215 Ga. App. 10, 449 S.E.2d 545 (1994).

Evidence that defendant drove an automobile while the defendant's blood-alcohol level was in excess of the legal limit was sufficient to authorize the jury's finding that the defendant was guilty beyond a reasonable doubt. *Ellerbee v. State*, 215 Ga. App. 102, 449 S.E.2d 874 (1994).

Whether the person is a less safe driver is irrelevant because to obtain a conviction the state only needs to prove the physical act of driving with any amount of the specified drugs in the blood or urine. *Kevinezz v. State*, 265 Ga. 78, 454 S.E.2d 441 (1995).

Evidence was sufficient to support a conviction for driving under the influence, notwithstanding the reversal of the defendant's conviction for making an improper turn, when the arresting officer testified that the defendant abruptly turned in front of another vehicle and almost caused an accident and that the officer noticed an odor of alcohol on the defendant's breath and that the defendant had bloodshot and glassy eyes. *Burke v. State*, 233 Ga. App. 778, 505 S.E.2d 528 (1998).

Two breathalyzer tests, which showed blood alcohol concentrations of .101 and .103 were sufficient to support a conviction for driving under the influence, notwithstanding that the breathalyzer machine had a margin of error of .010. *Scheipers v. State*, 234 Ga. App. 112, 505 S.E.2d 835 (1998).

When the evidence showed that the defendant lost control of the defendant's vehicle while the defendant was speeding and attempting to pass in a no-passing zone and that the defendant had ingested both alcohol and cocaine, the defendant was properly convicted of driving under the influence. *Gentry v. State*, 236 Ga. App. 820, 513 S.E.2d 528 (1999).

When the evidence showed that the defendant not only smelled of alcohol and failed field sobriety tests, but also that the defendant sped through a stop sign, the jury was authorized to find beyond a reasonable doubt that the defendant was guilty of driving under the influence of alcohol to the extent that it was less safe for defendant to drive. *Kelly v. State*, 242 Ga. App. 30, 528 S.E.2d 812 (2000).

Police officer's testimony and evidence of the state-administered blood alcohol result to which the defendant stipulated were sufficient to enable the jury to conclude beyond a reasonable doubt that the defendant was guilty of DUI in violation of O.C.G.A. § 40-6-391(a)(1). *Schoolfield v. State*, 251 Ga. App. 52, 554 S.E.2d 181 (2001).

Evidence was sufficient to support a conviction for driving under the influence of alcohol in violation of O.C.G.A. § 40-6-391(a)(1) since the evidence showed that the defendant smelled strongly of alcohol, had watery bloodshot eyes, failed the horizontal gaze nystagmus test, and was positive for alcohol on the alcosensor test. *Duren v. State*, 252 Ga. App. 257, 555 S.E.2d 913 (2001).

When police discovered the defendant, passed out in the driver's seat of the defendant's truck, with the engine running, in a front yard and the defendant's blood-alcohol content was over the legal limit, the reasonable conclusion was that the defendant was driving the truck while under the influence and it followed that the evidence of defendant's guilt was suf-

Evidence (Cont'd)

ficient to sustain defendant's conviction. *Jarriel v. State*, 255 Ga. App. 305, 565 S.E.2d 521 (2002).

Evidence was sufficient to convict the defendant of driving while under the influence of alcohol as the state introduced evidence to satisfy the statutory requirement that the defendant's alcohol concentration was equal or greater to the legal limit within three hours of driving. *Young v. State*, 275 Ga. 309, 565 S.E.2d 814 (2002).

Because there was no requirement that a driver actually committed an unsafe act to be found to be under the influence of alcohol to the extent that it was less safe for the driver to drive, or that the state had to prove impaired driving ability, a rational trier of fact was authorized to find beyond a reasonable doubt that the defendant was driving while impaired by alcohol to the extent that the defendant was a less safe driver after the state produced evidence that, at the time of a vehicle stop, the defendant had glassy, bloodshot eyes, was unsteady, smelled of alcohol, had jumpy eyes in field sobriety tests, had alcohol on the breath, had trouble reciting the alphabet, had a blood-alcohol level of approximately .09 grams, and had admitted to drinking alcohol that evening. *Susman v. State*, 256 Ga. App. 94, 567 S.E.2d 736 (2002).

There was sufficient evidence to support defendant's conviction of driving under the influence of alcohol to the extent that it was less safe to drive in violation of O.C.G.A. § 40-6-391(a)(1) since, *inter alia*, the defendant was stopped for speeding, defendant's eyes were glassy and blood-shot, the defendant's speech was slightly slurred, the defendant's breath had a strong odor of alcohol, the defendant admitted to having consumed more than one drink, and the defendant failed several field sobriety tests. *Mueller v. State*, 257 Ga. App. 830, 572 S.E.2d 627 (2002).

Trial court did not err in denying the defendant's motions for directed verdict and new trial because the evidence was sufficient to sustain the defendant's convictions for vehicular homicide and DUI where several witnesses on the scene tes-

tified that the defendant was in the driver's seat of the vehicle immediately after the accident. *Hunt v. State*, 261 Ga. App. 417, 582 S.E.2d 493 (2003).

Evidence that the defendant was driving erratically, that the defendant's breath smelled of alcohol, that the defendant's eyes were red, that the defendant's speech was slurred, and that the defendant exited the vehicle in a slow and unsteady manner after the defendant was stopped by a police officer for traffic violations was sufficient to support the defendant's conviction for driving under the influence of alcohol. *Stearnes v. State*, 261 Ga. App. 522, 583 S.E.2d 195 (2003).

Evidence that the defendant had crack cocaine in defendant's urine at the time the defendant led police on a high-speed motor vehicle chase, including subsequent tests that confirmed the defendant had crack cocaine in the defendant's system, was sufficient to support the defendant's conviction for driving with drugs present in the defendant's urine. *Arnold v. State*, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Police officer's testimony that the defendant was driving erratically, failed to pass field sobriety tests, and, when confronted smelled of alcohol and was exhibiting strange behavior was sufficient to sustain a DUI conviction in violation of O.C.G.A. § 40-6-391(a)(1). *Weldon v. State*, 262 Ga. App. 854, 586 S.E.2d 741 (2003).

There was sufficient evidence to support the defendant's conviction for driving under the influence of alcohol to the extent it was less safe for the defendant to drive pursuant to O.C.G.A. § 40-6-391(a)(1), including the defendant's admission to police, the admissibility of which the defendant conceded by brief on appeal, the condition of the defendant's person upon being arrested, and the defendant's failure of the field sobriety tests administered on the scene, as well as the breath tests administered shortly thereafter; there is no requirement that the defendant actually commit an unsafe act to violate § 40-6-391(a)(1). *Marryott v. State*, 263 Ga. App. 65, 587 S.E.2d 217 (2003).

Defendant's conviction for drunk driving was upheld on appeal because sufficient evidence showed that the defendant failed the field sobriety tests administered

to the defendant and because, upon arrest, the defendant had red glassy eyes, an unsteady stance, mumbled speech, smelled of alcohol, admitted to having had two beers, and admitted to driving to a bar. *Mullady v. State*, 270 Ga. App. 444, 606 S.E.2d 645 (2004).

Evidence insufficient to sustain conviction of driving under influence. — When it was not shown whether or not it was less safe for the defendant to operate the car than it would have been without the alleged intoxicants, opinion evidence that the defendant had been drinking was insufficient to sustain a conviction for operating an automobile upon a public highway while under the influence. *Turner v. State*, 95 Ga. App. 157, 97 S.E.2d 348 (1957).

When the evidence introduced on behalf of the state showed merely that an automobile belonging to the defendant was observed being operated on a public street or thoroughfare, that when the officers stopped the automobile the officers arrested the defendant, who was in the automobile and was in an intoxicated condition, and that another adult person was also an occupant of the automobile; since the evidence wholly fails to show directly that the defendant was the operator of the automobile; and since the circumstances otherwise appearing in the case are equally consistent with the theory that the other occupant was the driver of the automobile as with the theory that the defendant was the driver, the evidence was insufficient to authorize the verdict of guilty. *Spence v. State*, 96 Ga. App. 851, 102 S.E.2d 51 (1958).

Arresting officer's testimony that the defendant's "eyes were red and glassy, and he had an odor of alcoholic beverage about his breath" was insufficient to sustain a conviction under paragraph (a)(1) of O.C.G.A. § 40-6-391 since the officer testified unequivocally that the defendant's speech was not slurred, that the defendant was not staggering, and that there was nothing unusual or erratic about the defendant's driving. *Clay v. State*, 193 Ga. App. 377, 387 S.E.2d 644 (1989).

With the exclusion of the defendant's medical records from evidence, the remaining evidence was not sufficient to

enable a rational trier of fact to find the defendant guilty of violating O.C.G.A. § 40-6-391. *King v. State*, 272 Ga. 788, 535 S.E.2d 492 (2000).

Because no one saw the defendant drive the truck and there was no testimony or other evidence about the defendant's manner of driving or ability to drive, the evidence was insufficient to support a verdict on the driving under the influence count. *Peck v. State*, 245 Ga. App. 599, 538 S.E.2d 505 (2000).

Evidence was sufficient to convict the defendant of DUI when the victim the defendant hit with the defendant's truck testified in considerable detail about the defendant's failed effort to move the defendant's truck uneventfully from the truck's parking space and the victim also testified without dispute that the defendant smelled of alcohol, the defendant's speech was slurred, the defendant was slumped over the steering wheel, and seemed "incoherent." *McKay v. State*, 264 Ga. App. 726, 592 S.E.2d 135 (2003).

Because the state failed to prove that the defendant's blood alcohol level exceeded the legal limit within three hours of the time that the defendant was in actual physical control of a vehicle, and failed to present expert testimony to establish this fact, the appeals court agreed with the defendant's contention that insufficient evidence supported the defendant's DUI conviction under O.C.G.A. § 40-6-391(a)(5). *Peters v. State*, 281 Ga. App. 385, 636 S.E.2d 97 (2006).

Defendant's blood test results should have been suppressed because, although a nurse and an officer testified that the officer read the implied consent warning to the defendant prior to the blood draw, the actual card from which the officer read was not admitted into evidence, the state did not produce evidence of what was read to the defendant, and the state thus failed to prove that the state complied with the O.C.G.A. § 40-5-67.1(b) implied consent notice requirements; in the absence of the blood test results, there was no competent evidence that the defendant had an alcohol concentration of .08 grams or more within three hours after driving as charged in the accusation. Thus, the conviction for DUI per se was not supported

Evidence (Cont'd)

by sufficient evidence. *Epps v. State*, 298 Ga. App. 607, 680 S.E.2d 636 (2009).

Since the state failed to show that the defendant had driven any vehicle during the relevant period or that a particular vehicle was involved in a hit-and-run incident, the evidence was not sufficient to support defendant's convictions for hit-and-run and less safe DUI, in violation of O.C.G.A. §§ 40-6-270 and 40-6-391(a)(1); there was also no evidence that the defendant owned the car or was authorized to drive the car. *Reynolds v. State*, 306 Ga. App. 1, 700 S.E.2d 888 (2010).

Evidence insufficient for "less safe driver" conviction. — Trial court erred in the court's conviction of an underage defendant who, while speeding, lost vehicular control, when the companions' testimony did not adduce that the defendant was a less safe driver as a result of being under the influence of alcohol, officer's testimony did not trace alcohol specifically to the defendant, and the defendant had blood test results indicating .04 grams. *Davis v. State*, 206 Ga. App. 647, 426 S.E.2d 267 (1992).

City police officer's testimony that the defendant was exceeding the speed limit by 10 miles per hour as shown by radar could not be used with evidence of a positive urine sample to support the defendant's conviction under paragraph (a)(2) of O.C.G.A. § 40-6-391. *Webb v. State*, 223 Ga. App. 9, 476 S.E.2d 781 (1996).

Evidence was sufficient to sustain a conviction since the arresting officer testified that the defendant had slurred speech, red and glassy eyes, was loud and boisterous, had the odor of an alcoholic beverage, and that the officer believed the defendant was under the influence of alcohol to a point where it was less safe to drive. *Moore v. State*, 234 Ga. App. 332, 506 S.E.2d 685 (1998).

When the evidence that the defendant was impaired as a result of ingesting marijuana consisted of a police officer's testimony that the defendant had red, glassy eyes and red eyelids at the time the defendant was stopped and admitted to having smoked marijuana earlier that

evening, but the officer's testimony did not indicate that the defendant's speech was slurred, that the defendant was staggering, that the defendant failed any field sobriety tests or that there was anything unusual or erratic about the defendant's driving, it was insufficient to sustain a less safe driver conviction. *Bowen v. State*, 235 Ga. App. 900, 510 S.E.2d 873 (1999).

Evidence was not sufficient to establish that the defendant was driving under the influence of alcohol to the extent it made the defendant a less safe driver as the evidence at most showed the defendant had consumed an alcoholic beverage earlier in the day and, thus, that the defendant had alcohol in the defendant's system; however, the evidence did not show the alcohol in the defendant's system impaired the defendant or made the defendant a less safe driver. *Ricks v. State*, 255 Ga. App. 188, 564 S.E.2d 793 (2002).

Evidence supported a conviction of DUI to the extent that it was less safe to drive after the officer testified that the defendant drove erratically, had a flushed face and bloodshot eyes, and smelled of alcohol; the officer also noticed that the defendant's speech was heavily slurred, the defendant staggered and was unsteady on the defendant's feet, the defendant almost fell four times during the field sobriety tests, and that the defendant's performance on the tests indicated that the defendant was impaired. *Grodhaus v. State*, 287 Ga. App. 628, 653 S.E.2d 67 (2007), cert. denied, 2008 Ga. LEXIS 173 (Ga. 2008).

Defendant's conviction for driving while under the influence of any drug to the extent that it was less safe for the defendant to drive, in violation of O.C.G.A. § 40-6-391(a)(2), was reversed because there was no evidence as to the effect of the drugs in the defendant's blood, alprazolam and a cocaine metabolite, on the defendant's ability to drive safely. *Head v. State*, 303 Ga. App. 475, 693 S.E.2d 845 (2010).

Evidence sufficient to establish that the defendant was a "less safe driver" within the meaning of paragraph (a)(1) of O.C.G.A. § 40-6-391. *Lee v. State*, 188 Ga. App. 406, 373 S.E.2d 28, cert. denied, 188 Ga. App. 912, 373 S.E.2d 28

(1988); *Ayers v. City of Atlanta*, 221 Ga. App. 381, 471 S.E.2d 240 (1996); *Tam v. State*, 225 Ga. App. 101, 483 S.E.2d 142 (1997); *Thomas v. State*, 226 Ga. App. 1, 485 S.E.2d 246 (1997); *Dixon v. State*, 227 Ga. App. 533, 489 S.E.2d 532 (1997); *Hamilton v. State*, 228 Ga. App. 285, 491 S.E.2d 485 (1997); *Heath v. State*, 229 Ga. App. 69, 493 S.E.2d 225 (1997); *Garrett v. State*, 230 Ga. App. 97, 495 S.E.2d 579 (1998); *Walker v. State*, 230 Ga. App. 376, 497 S.E.2d 12 (1998); *Kollman v. State*, 231 Ga. App. 630, 498 S.E.2d 745 (1998); *Tuttle v. State*, 232 Ga. App. 530, 502 S.E.2d 355 (1998); *Self v. State*, 232 Ga. App. 735, 503 S.E.2d 625 (1998); *Mealor v. State*, 233 Ga. App. 193, 504 S.E.2d 29 (1998); *Sheffield v. State*, 237 Ga. App. 701, 516 S.E.2d 563 (1999); *Lanier v. State*, 238 Ga. App. 875, 517 S.E.2d 106 (1999); *Forsman v. State*, 239 Ga. App. 612, 521 S.E.2d 410 (1999); *Byrd v. State*, 240 Ga. App. 354, 523 S.E.2d 578 (1999); *Driver v. State*, 240 Ga. App. 513, 523 S.E.2d 919 (1999); *Harding v. State*, 242 Ga. App. 609, 530 S.E.2d 514 (2000); *Fairbanks v. State*, 244 Ga. App. 123, 534 S.E.2d 529 (2000); *Poole v. State*, 249 Ga. App. 409, 548 S.E.2d 113 (2001).

Evidence was presented from which a rational trier of fact could reasonably find the defendant was intoxicated and that the defendant's intoxication caused the defendant to be a "less safe" driver which caused the collision and deaths of the defendant's three passengers. *Mote v. State*, 212 Ga. App. 551, 442 S.E.2d 799 (1994).

When the officer questioned the defendant about the vehicle, the defendant admitted that the defendant had been driving the vehicle, the defendant was unsteady on the defendant's feet and was unable to coordinate the defendant's motor and verbal skills, the defendant's eyes were bloodshot, a strong odor of alcohol permeated the defendant's body and clothing and the defendant subsequently submitted to an alco-sensor test, which was positive, this evidence was sufficient to authorize the trial court's finding that the defendant was guilty beyond a reasonable doubt of operating a moving vehicle under the influence of alcohol to the extent that it was less safe to drive. *Martin v. State*, 216 Ga. App. 25, 453 S.E.2d 498 (1995).

Testimony of one police officer that the officer observed the defendant drive into a parking lot at a high rate of speed, "scrub" a curb, abruptly make a loop, run a stop sign, and continue driving at a reckless speed, and testimony of that officer and a second officer that the defendant had bloodshot eyes, slurred speech, and a strong odor of alcohol about the defendant was sufficient to support the defendant's conviction for driving under the influence of alcohol (DUI) to the extent that it was less safe for the defendant to drive. *Boyd v. State*, 259 Ga. App. 864, 578 S.E.2d 472 (2003).

Evidence that the police officer noticed the distinct smell of alcohol about the defendant, that the defendant admitted consuming two beers, and that the defendant had trouble performing field sobriety tests was sufficient to support the defendant's conviction for driving under the influence to the extent that the defendant was a less safe driver. *Long v. State*, 261 Ga. App. 478, 583 S.E.2d 158 (2003).

Evidence was sufficient to support a less safe conviction under O.C.G.A. § 40-6-391(a)(1) since, although the arresting officer did not see the defendant drive, the defendant told the arresting officer the defendant was driving, that the defendant had collided with a tractor trailer, since the defendant never told the officer that the defendant was not driving or that another person had been driving the car, since the officer, who was an experienced accident investigator, testified that the tractor trailer's lane was clearly established when the tractor trailer was struck, that the defendant admitted that the defendant had been drinking, that the defendant smelled like alcohol, that the defendant's eyes were bloodshot, that the defendant's speech was slurred, and since the results of a test of the defendant's blood alcohol showed a level of .178 grams. *Shoemaker v. State*, 266 Ga. App. 342, 596 S.E.2d 805 (2004).

Evidence that, while attempting to elude a police officer, the defendant drove at over 80 miles per hour, ran stop signs and traffic lights, struck two vehicles and tried to strike another, along with evidence of marijuana in the defendant's system, established the defendant's guilt of

Evidence (Cont'd)

driving under the influence of marijuana to the extent that the defendant was a less safe driver. *Ponder v. State*, 274 Ga. App. 93, 616 S.E.2d 857 (2005).

Evidence that the defendant approached a stop sign at a high rate of speed on a highway's right shoulder between stopped traffic and the guardrail, passed stopped vehicles, and turned right at the stop sign without stopping, along with the defendant's bloodshot eyes, sobriety test results, and a trooper's opinion that the defendant was impaired, were sufficient to sustain a conviction of driving under the influence to the extent that the defendant was a less safe driver; since the state did not try to use the defendant's positive alco-sensor results, the requested charge that the jury be instructed that the alco-sensor test could not be used to establish breath-alcohol content was neither apt nor relevant. *Hatcher v. State*, 277 Ga. App. 611, 627 S.E.2d 175 (2006).

Evidence was sufficient to find the defendant guilty of vehicular homicide by driving under the influence of alcohol to the extent that it was less safe to drive, O.C.G.A. § 40-6-391(a)(1); despite the defendant's claims that the officers' statements were insufficient to prove that the blood alcohol concentration was .08 grams or more, the defendant stipulated that the Intoxilyzers used were "used to measure the blood alcohol content" of the body, and both officers read into evidence their implied consent cards which included the language ".08 grams." *Corbett v. State*, 277 Ga. App. 715, 627 S.E.2d 365 (2006).

Convictions of driving under the influence of alcohol to the extent that it was less safe for the defendant to drive, O.C.G.A. § 40-6-391(a)(1), reckless driving, O.C.G.A. § 40-6-390, and failure to maintain a lane, O.C.G.A. § 40-6-48, were supported by sufficient evidence when an officer stopped to assist the defendant, whose car was parked on the side of a road, the defendant told the officer that the defendant had driven off the road, the officer found tire marks and a fender in the area where the defendant ran off the road and the defendant's vehicle was missing the vehicle's left front fender, the

officer noticed a strong odor of alcohol on the defendant's breath, the defendant admitted to drinking for over four hours and could not tell the officer how many drinks had been consumed, and the defendant then failed field sobriety tests. *Taylor v. State*, 278 Ga. App. 181, 628 S.E.2d 611 (2006).

Because the state failed to present sufficient evidence that the defendant had driven a vehicle within three hours prior to the Intoxilyzer 5000 test being administered, and no evidence was presented to support a per se violation of the offense, a driving under the influence of alcohol with an unlawful blood alcohol level conviction was reversed; but, given the defendant's admission to losing control of the vehicle and running into an embankment on the opposite side of the road, and evidence of a blood alcohol level well above the legal limit, which constituted circumstantial evidence of being a less-safe driver, a less-safe driving under the influence conviction was upheld. *Norton v. State*, 280 Ga. App. 303, 640 S.E.2d 48 (2006).

Defendant's conviction for driving under the influence to the extent that the defendant was a less safe driver under O.C.G.A. § 40-6-391(a)(1) was affirmed as it was supported by sufficient evidence including: (1) the defendant's admissions that the defendant had been driving a motorcycle and that the defendant had consumed "beer, tequila, and lots of alcohol" earlier in the day; (2) the defendant's refusal to submit to state-administered chemical testing; and (3) a deputy's opinion that the defendant was under the influence of alcohol to the extent that the defendant was a less safe driver. *Kimbrell v. State*, 280 Ga. App. 867, 635 S.E.2d 237 (2006).

Given that the state's evidence sufficiently showed that the defendant essentially admitted to being drunk to an investigating officer, and as a result of an attempt to drive, the car was lodged on a curb, and the officer found an open beer container inside the car, although circumstantial, this evidence was sufficient to support a finding that the defendant was driving the car while intoxicated; hence, the defendant was not entitled to a directed verdict of acquittal. *Moore v. State*, 281 Ga. App. 141, 635 S.E.2d 408 (2006).

Convictions for driving under the influence of drugs and to the extent that the defendant was a less-safe driver were upheld on appeal as supported by sufficient evidence, given that the defendant drove erratically, manifested signs of impairment, and had three drugs in the defendant's system; hence, when coupled with the fact that no evidence of tampering with the defendant's urine sample was submitted, the trial court did not abuse the court's discretion in admitting the sample and in denying the defendant's motion for a new trial. *Kelly v. State*, 281 Ga. App. 432, 636 S.E.2d 143 (2006).

Because an officer's description of the defendant's speech, behavior, bloodshot eyes, odor, performance on the field sobriety tests, and the result of the alco-sensor test, when coupled with the defendant's own testimony, were sufficient to authorize a jury to convict the defendant of driving under the influence of alcohol to the extent of being a less safe driver, the trial court properly denied the defendant a new trial. *Renkiewicz v. State*, 283 Ga. App. 692, 642 S.E.2d 384 (2007).

Appeals court found sufficient evidence to support the defendant's convictions for DUI to the degree of being a less-safe driver and of failing to stop at a stop sign as the evidence, although not overwhelming, showed that the defendant smelled of alcohol, had run a stop sign, and that the arresting officer believed that the defendant was a less-safe driver as a result of alcohol consumption. *Sistrunk v. State*, 287 Ga. App. 39, 651 S.E.2d 350 (2007).

Because: (1) the appeals court did not weigh the evidence or determine witness credibility, despite the two conflicting views of the evidence; and (2) a jury charge related to HGN tests, where no HGN test was given, was proper, sufficient evidence supported the defendant's less-safe driver conviction under O.C.G.A. § 40-6-391(a)(1); thus, the trial court did not err in denying the defendant's motion for a directed verdict of acquittal. *Massa v. State*, 287 Ga. App. 494, 651 S.E.2d 806 (2007).

Evidence was sufficient to sustain the defendant's conviction for "less safe" driving under the influence, O.C.G.A. § 40-6-391(a)(1), as in addition to the de-

fendant having slurred speech and blood-shot, watery eyes, being unsteady on the defendant's feet, admitting to drinking, having a blood-alcohol content of .136 gram percent, and driving the defendant's car off the roadway, the experienced arresting officer testified that, in the officer's opinion, the defendant was less safe to drive. *Schlanger v. State*, 290 Ga. App. 407, 659 S.E.2d 823 (2008).

Evidence was sufficient for any rational trier of fact to find the defendant guilty of driving under the influence of alcohol to the extent that the defendant was a less safe driver, O.C.G.A. § 40-6-391(a)(1), beyond a reasonable doubt because the defendant's drinking was established by evidence that the defendant's blood-alcohol level was between .078 and .115 at the time of the incident, and the defendant drove the vehicle off the roadway, spun out of control, and struck an electrical pole; the arresting deputies testified to the defendant's slurred speech, stumbling gait, "glazy" eyes, and "pasty" complexion, one of the officers smelled alcohol coming from the defendant's person and vehicle, and the experienced officers testified that, in their opinion, the defendant was under the influence to the extent that it was less safe for the defendant to drive. *Davis v. State*, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

Trial court did not err in convicting the defendant of driving under the influence of alcohol to the extent it was less safe for the defendant to drive, possession of an open container of alcoholic beverage, and disorderly conduct because the testimony of the driver accosted by the defendant and the arresting officer was sufficient to enable a rational jury to find the defendant guilty beyond a reasonable doubt of the charged crimes; the defendant's erratic driving in a crowded parking lot, the defendant's odd and belligerent behavior toward the other driver in a drive-thru line, the odor of alcohol on the defendant's breath and person, the defendant's watery and bloodshot eyes, the defendant's staggering on the sidewalk, the defendant's refusal to submit to the alco-sensor test, the field sobriety tests, and the state-administered breath test, and the

Evidence (Cont'd)

open container in the defendant's truck were sufficient to show that alcohol impaired the defendant's ability to drive safely. *Corbin v. State*, 305 Ga. App. 768, 700 S.E.2d 868 (2010).

Although a police officer did not conduct field sobriety tests due to the defendant's injuries, the evidence was sufficient to sustain the defendant's DUI less safe conviction because the evidence showed that: (1) the defendant lost control of the vehicle the defendant was driving and left the roadway; (2) the defendant told a 9-1-1 operator after the accident that the defendant was intoxicated; (3) there was an odor of alcohol inside the vehicle; (4) there was an odor of alcohol on the defendant's person; and (5) the defendant's eyes were dilated in a well-lit room. *Fletcher v. State*, 307 Ga. App. 131, 704 S.E.2d 222 (2010).

Sufficient evidence including: (1) the defendant's excessive speed and erratic driving; (2) the defendant's possession of methamphetamine; and (3) the defendant's blood results showing the presence of methamphetamine and amphetamine, supported the jury's finding that the defendant's ability to safely operate the vehicle was impaired by the defendant's ingestion of methamphetamine and amphetamine. *Kar v. State*, 318 Ga. App. 379, 733 S.E.2d 387 (2012).

Evidence sufficient for vehicular homicide conviction. — After the defendant admitted having consumed a six-pack of beer approximately two-and-one-half hours prior to the accident, and a forensic chemist testified that the defendant's blood-alcohol level at the time of the accident would have been between .105 and .13 percent, the expert testimony was sufficient, pursuant to former subparagraph (b)(3) of O.C.G.A. § 40-6-392, to authorize the conclusion that the defendant was "under the influence of alcohol" within the contemplation of paragraph (a)(1) of O.C.G.A. § 40-6-391. Based on this evidence, combined with the evidence of the defendant's erratic driving, a rational trier of fact could reasonably have found the defendant guilty of vehicular homicide beyond a

reasonable doubt. *Collum v. State*, 186 Ga. App. 822, 368 S.E.2d 578 (1988).

In a prosecution for vehicular homicide, the state was not required to produce direct evidence showing that the defendant's impaired driving ability proximately caused the collision. *Dobson v. State*, 222 Ga. App. 331, 474 S.E.2d 630 (1996).

Allegations in an indictment of reckless driving and vehicular homicide through reckless driving, in violation of O.C.G.A. §§ 40-6-390(a) and 40-6-391(a)(1), were proven by evidence that the defendant drove 15 to 20 miles over the speed limit in the rain, weaving in and out of traffic, with a blood alcohol level of 0.135, ultimately crossing a median into oncoming traffic and killing a victim. *Prather v. State*, 303 Ga. App. 374, 693 S.E.2d 546 (2010).

Evidence of prior conviction as character evidence. — Although the evidence was sufficient to support defendant's convictions for vehicular homicide under O.C.G.A. § 40-6-391(b), the court's admission of similar-transaction evidence, consisting of a prior methamphetamine conviction, was erroneous as irrelevant character evidence under former O.C.G.A. § 24-2-2 (see now O.C.G.A. § 24-4-404), and the conviction was reversed. *McMullen v. State*, 316 Ga. App. 684, 730 S.E.2d 151 (2012).

Evidence sufficient to support adjudication of delinquency based on charge of driving under influence. In re C.P.M., 213 Ga. App. 761, 446 S.E.2d 242 (1994).

Admission of similar transaction evidence appropriate. — Notwithstanding a defendant's argument that the admission of similar transaction evidence at the defendant's trial for driving under the influence to show bent of mind violated state and federal due process, the court had to affirm the judgment as only the Georgia Supreme Court or the legislature had the authority to depart from the state's established rule on the admissibility of such evidence. *Wade v. State*, 295 Ga. App. 45, 670 S.E.2d 864 (2008), cert. denied, No. S09C0568, 2009 Ga. LEXIS 265.

Relevant evidence admissible. — Defendant was properly convicted of DUI

per se in violation of O.C.G.A. § 40-6-391(a)(5) because the trial court did not err in admitting evidence of the defendant being a less safe driver, the defendant's alcohol impairment, and of the field sobriety tests; the evidence of the defendant's field sobriety test was relevant to counter the defendant's attacks on the accuracy of the breath test, and the evidence of the defendant's impairment was relevant to establish the facts that were the basis for the DUI arrest. *Holowiak v. State*, 308 Ga. App. 887, 709 S.E.2d 39, overruled on other grounds, *Davenport v. State*, 289 Ga. 399, 711 S.E.2d 699 (2011); vacated in part, 316 Ga. App. 328, 729 S.E.2d 486 (2012).

Failure to show breath test machine manufacturer was a material witness. — In 10 driving under the influence cases, because the defendants failed to present any evidence of facts supporting the existence of an error in their breath test results as required by case law, the trial court did not abuse the court's discretion when the court determined that the defendants failed to show that the machine's manufacturer was a material witness under the Uniform Act to Secure Attendance of an Out-of-State Witness Act, O.C.G.A. § 24-13-94(a). *Young v. State*, 324 Ga. App. 127, 749 S.E.2d 423 (2013).

Suppression motion to exclude breath test results properly denied. — Because the evidence sufficiently showed that the defendant asked for a blood test in response to the officer's request to submit to the state-administered breath test, clearly attempting to designate the state-administered test, not request an independent test, and the defendant understood that the type of test that would be done was solely of the state's choosing, the trial court properly denied a motion to suppress the breath test results obtained. *Brooks v. State*, 285 Ga. App. 624, 647 S.E.2d 328 (2007).

Fact that a defendant did not have sufficient breath to complete the second of two breath tests did not require suppression of the first test which indicated a blood alcohol level of .146. *Thrasher v. State*, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Trial court did not err in admitting the results of the defendant's portable alco-sensor test because even though the defendant was in custody for purposes of *Miranda*, the portable test was administered in response to a demand from the defendant, not the officer; thus, the situation was more akin to a spontaneous outburst from an unwarned suspect or a test conducted pursuant to the Georgia Implied Consent Statute, O.C.G.A. § 40-6-392. *Hale v. State*, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

It constitutes negligence for motorist to operate a car while under influence of intoxicating liquors when the liquor contributes to and is a cause of the motorist's running into and striking another's car. *Hammond v. Young*, 89 Ga. App. 669, 80 S.E.2d 825 (1954) (decided under former Code 1933, § 68-307).

Quantification of controlled substance not required. — Amounts of controlled substances in urine sample did not have to be quantified to prove charges of driving under the combined influence of marijuana and cocaine and drug possession. *Kerr v. State*, 205 Ga. App. 624, 423 S.E.2d 276, cert. denied, *Tempo Mgt., Inc. v. Lewis*, 210 Ga. App. 390, 436 S.E.2d 98 (1993).

Trial court did not err by allowing evidence of the defendant's urine test's results even though the laboratory report did not quantify the cocaine detected in the defendant's urine. *Woityra v. State*, 213 Ga. App. 89, 443 S.E.2d 867 (1994).

Evidence of drugs insufficient. — When the evidence at trial that a defendant had ingested cocaine was the only evidence adduced to show defendant's violation of O.C.G.A. § 40-6-391, there was nothing from which the jury could have inferred that the defendant was under the influence of cocaine to the extent that the defendant was a less safe driver; thus, the evidence was not sufficient to convict the defendant of driving under the influence. *Sparks v. State*, 195 Ga. App. 589, 394 S.E.2d 407, overruled on other grounds, *Green v. State*, 260 Ga. 625, 398 S.E.2d 360 (1990).

Mere fact that the defendant had ingested marijuana as shown by a positive urine sample was not sufficient to support

Evidence (Cont'd)

a conviction under paragraph (a)(2) of O.C.G.A. § 40-6-391 because that provision did not prohibit driving after ingesting any quantity of drugs. *Webb v. State*, 223 Ga. App. 9, 476 S.E.2d 781 (1996).

Admissibility of field sobriety tests.

— Because the defendant: (1) was not in custody for the purposes of *Miranda* when asked to perform field sobriety tests; (2) did not make any statement or take any overt act which would have caused a reasonable person to believe that the encounter was anything more than a temporary detention; and (3) voluntarily submitted to the field sobriety tests, suppression of the results of the tests was properly denied. *McDevitt v. State*, 286 Ga. App. 120, 648 S.E.2d 481 (2007).

Trial court did not err in denying the defendant's motion to suppress evidence of the results of field sobriety tests on the ground that the tests were administered without the defendant having the benefit of a *Miranda* warning because the defendant was not in custody until after the field sobriety tests were complete; the defendant was allowed to walk around and was not put into handcuffs or a patrol car while the defendant and the first officer awaited the arrival of the second officer, and a reasonable person in the defendant's position could conclude that the person's freedom of action was only temporarily curtailed and that a final determination of the person's status was simply delayed. *DiMauro v. State*, 310 Ga. App. 526, 714 S.E.2d 105 (2011).

Guest's knowledge of host-driver's intoxication.

— Mere fact that, in an action by a guest against the host-driver of an automobile in which the plaintiff was riding, it is alleged, as one of the grounds of negligence, that the host was driving the automobile under the influence of intoxicating liquors, does not require the conclusion that the plaintiff knew of such intoxication at the time plaintiff entered the automobile or in time to have avoided any injury resulting from such negligence. *Stephenson v. Whiten*, 91 Ga. App. 110, 85 S.E.2d 165 (1954) (decided under former Code 1933, § 68-307).

Criminality partly dependent upon place where committed.

— Since the

statute makes it a misdemeanor to operate a motor vehicle while under the influence of intoxicants, upon any "public street or highway, or any private way, private street, or private property in this state," the criminality of the act depends, in part, upon the place where it is committed and, this being so, the allegation of place is material, and any variance between the allegation and the proof is fatal. *Isenhower v. State*, 88 Ga. App. 762, 77 S.E.2d 834 (1953) (decided under former Code 1933, § 68-307).

Proving defendant committed offense at exact point alleged.

— In a prosecution, upon a charge that the defendant in Floyd County, Georgia, drove and operated an automobile upon "a certain public street and public highway of said state and county, to wit: on U.S. Highway No. 27 at a point three miles south of Rome, Georgia," while in an intoxicated condition and while under the influence of intoxicating liquors, it was not necessary to prove that the defendant committed the offense at a point three miles south of Rome, Georgia, such allegation being mere surplusage. *Robinson v. State*, 76 Ga. App. 313, 45 S.E.2d 717 (1947) (decided under former Code 1933, § 68-307).

No reversal when state testified to only one breath test.

— Appeals court rejected the defendant's argument that the evidence was insufficient to support a conviction for driving under the influence of alcohol per se because only one breath test was testified to by the state and O.C.G.A. § 40-6-392(a)(1)(B) mandated that two breath tests had to be given; moreover, even if the court were to agree with this contention, the defendant waived this argument by failing to make any objection at trial to the admission of the single breath test. *Annaswamy v. State*, 284 Ga. App. 6, 642 S.E.2d 917 (2007).

Alco-sensor test results not admissible to demonstrate blood-alcohol content.

— Because the defendant attempted to use an alco-sensor test result to show a blood-alcohol amount, and such a result was not admissible for that purpose, but instead was used as an initial screening device to aid the police officer in determining probable cause to arrest a

motorist suspected of driving under the influence of alcohol, the trial court did not err in excluding such evidence for the purpose sought by the defendant. *Trull v. State*, 286 Ga. App. 441, 649 S.E.2d 571 (2007).

Intervening failed breath test results admissible. — Because an intervening failed breath test, due to the defendant's inability to provide an adequate sample, did not render otherwise valid breath alcohol test results inadmissible, and given that the fact of an intervening failed breath test went to the weight, not the admissibility, of the test results, suppression of the results was properly denied. *Davis v. State*, 286 Ga. App. 443, 649 S.E.2d 568 (2007).

Witness' observation as to person's intoxication. — In a prosecution for operating a motor truck on the public highway while intoxicated, since the answer of a witness is that the defendant was under the influence of intoxicating liquor, the jury is authorized to say that since the observed matter in issue cannot be so fully and accurately described as to put the jury completely in the place of the testifying witness, thus enabling the jurors to draw the inference equally as well as the witness, the jury may determine the condition of the defendant from the direct testimony of the witness who observed the defendant, rather than from a subsequent description of the defendant's conduct by the witness. *Grier v. State*, 72 Ga. App. 633, 34 S.E.2d 642 (1945) (decided under former Code 1933, § 68-307).

In a prosecution for driving an automobile under the influence of intoxicating liquor it is proper for a witness who had, and can prove that the witness had, suitable opportunities for observation to state whether a person was intoxicated or that the witness appeared to be drinking. *Spence v. State*, 83 Ga. App. 588, 63 S.E.2d 910 (1951) (decided under former Code 1933, § 68-307).

Recording of 9-1-1 call. — In a trial for driving under the influence of alcohol to the extent of being a less safe driver in violation of O.C.G.A. § 40-6-391(a)(1), admission of a recording of a 9-1-1 call made by a caller who was following the defendant's vehicle was proper. Admission of

the call did not violate the Confrontation Clause of the Sixth Amendment because the call's primary purpose was to prevent immediate harm to the public, not to establish evidentiary facts for a future prosecution, and the call was admissible under former O.C.G.A. § 24-3-3 (see now O.C.G.A. § 24-8-803) because the caller had not deliberated about the statement and had personal knowledge of what the caller described to the 9-1-1 operator. *Key v. State*, 289 Ga. App. 317, 657 S.E.2d 273 (2008).

Failure to include trial transcript in record on appeal. — Because the defendant failed to include the trial transcript in the record for the appellate court to review an order denying the defendant's motion to suppress, that court had to assume as a matter of law that the evidence presented supported the trial court's findings, and that the court properly exercised the court's judgment and discretion. *Pittman v. State*, 286 Ga. App. 415, 650 S.E.2d 302 (2007).

Error as to blood test results waived on appeal. — In a prosecution for DUI, the trial court did not err in denying the defendant's motion to suppress the blood test evidence as the trial court properly allowed the discovery of notes, memoranda, graphs, or computer printouts pertaining to the blood sample taken as well as all chain of custody documentation because they were the only items deemed relevant to the prosecution; suppression of the blood test results was not required as the defendant waived error on appeal as to the absence of one of the two lab testers. *Cottrell v. State*, 287 Ga. App. 89, 651 S.E.2d 444 (2007), cert. denied, No. S07C1894, 2007 Ga. LEXIS 816 (Ga. 2007).

Error in admitting chemical test results harmless in light of other evidence. — While the appeals court agreed that the trial court erred in denying the defendant's motion to suppress the results of the chemical test of the defendant's blood, the error was harmless as other evidence presented by the state, specifically the defendant's admission to being intoxicated and the testimony of other witnesses describing their observations, proved the defendant's intoxication.

Evidence (Cont'd)

Harrelson v. State, 287 Ga. App. 664, 653 S.E.2d 98 (2007).

Expert testimony. — Trial court did not err in not allowing an ophthalmologist to testify as an expert that a driving-under-the-influence defendant had two surgeries in the past, which could have affected the defendant's performance on walk-and-turn and one-leg-stand tests. The witness had no personal knowledge of the surgery in question or of the medical records referring to the surgeries; moreover, the defendant's live-in companion was permitted to testify at length regarding the defendant's medical issues arising from the surgery and the surgery's effect on the defendant's ability to walk normally at the time of the arrest. Aal v. State, 290 Ga. App. 252, 659 S.E.2d 609 (2008).

Sitting in driver's seat sufficient. — Arresting officer's testimony that the defendant was sitting in the driver's seat of the vehicle with the keys in the ignition and the dashboard lights on when the officer arrived less than three hours before administering the breath test was sufficient to support the charge for DUI per se. State v. Gaggini, 321 Ga. App. 31, 740 S.E.2d 845 (2013).

Instructions to Jury

Charge correct on witness' ability to judge intoxication. — In a proceeding the defendant was convicted of driving under influence of alcohol, the trial court's charge that "a witness who had and was able to improve suitable opportunities for observation may state whether a person was intoxicated and the extent of his intoxication" was proper and stated a correct principle of law and there was no harmful error in the charge given. Smitherman v. State, 157 Ga. App. 526, 278 S.E.2d 107 (1981).

Language to the effect that "a witness who satisfactorily shows that he had opportunity to observe, and did observe, the condition of another, may testify whether that person was under the influence of intoxicants and the extent thereof, stating the facts upon which the opinion is based" is suitable for use as a jury charge. Luke v.

State, 177 Ga. App. 518, 340 S.E.2d 30 (1986).

Inappropriate jury charge. — Trial court erred in the court's charge to the jury because the charge had the effect of eliminating the jury's consideration of defendant's defense to the violation of O.C.G.A. § 40-6-391. The charge did not allow for the defendant's defense that the car's movement was "an accident" caused by the defendant's falling headfirst onto the floorboard. Virgil v. State, 227 Ga. App. 96, 488 S.E.2d 694 (1997).

It was reversible error when the judge instructed the jury that "if there was at that time an alcohol concentration of 0.08 grams or more, it shall be inferred that the person was under the influence of alcohol as prohibited by Code Section 40-6-391" since, although this paraphrased the language of former subparagraph (b)(3) of O.C.G.A. § 40-6-392, it impermissibly shifted the burden to the defendant to prove the defendant's innocence of the driving under the influence charge under subsection (a)(1) of O.C.G.A. § 40-6-391. Davis v. State, 236 Ga. App. 32, 510 S.E.2d 889 (1999).

Charge as to witness' testimony constituting fact rather than opinion.

— Charge that a witness in a driving-under-the-influence case states a fact rather than an opinion when the witness testifies that a defendant was under the influence of intoxicating liquors could easily mislead a jury to a defendant's prejudice and reversal of a conviction is required. New v. State, 171 Ga. App. 392, 319 S.E.2d 542 (1984).

Charge did not impermissibly shift burden of proof to defendant. — Charging the jury that if a person has .12 percent or more by weight of alcohol in the person's blood while driving, that the person shall be in violation of Georgia law, did not impermissibly shift the burden of proof to the defendant. The charge created no such presumption but merely proscribed driving with a blood alcohol level of .12 percent. Koulianos v. State, 192 Ga. App. 90, 383 S.E.2d 642 (1989).

Trial court's jury charge on blood alcohol contents over .10 percent and .12 percent under former subparagraphs (b)(3) and (b)(4) of O.C.G.A. § 40-6-392, when

the defendant was formally charged with violating paragraph (a)(1) of O.C.G.A. § 40-6-391, did not impermissibly shift the burden of proof and allow the jury to convict the defendant of an offense different than the one charged. *Waters v. State*, 195 Ga. App. 288, 393 S.E.2d 280 (1990), cert. denied, 498 U.S. 970, 111 S. Ct. 437, 112 L. Ed. 2d 420 (1990).

Trial court's instruction to the jury on the definition of blood-alcohol concentration, derived from O.C.G.A. § 40-1-1(1), did not unconstitutionally shift the burden of proof from the state to the defendant. *Brannan v. State*, 261 Ga. 128, 401 S.E.2d 269 (1991).

Burden of proving defendant's lung capacity was not unconstitutionally shifted to the defendant since the court considered the weight to be given to the intoximeter results as well as other evidence regarding the defendant's condition at the time of the arrest. *Walker v. State*, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

Charges regarding the use of the blood to alcohol ratio have been held to be harmless so long as the charges are given in conjunction with a qualifying instruction regarding the inconclusiveness of the ratio. Therefore, the burden of proof was not shifted to the defendant. *Walker v. State*, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

In a prosecution of defendant for driving under the influence, to the extent that the defendant was a less safe driver, a charge that the jury might infer that a person was under the influence of alcohol if there was a blood alcohol concentration of 0.08 grams or more was not impermissible. *Animashaun v. State*, 216 Ga. App. 104, 453 S.E.2d 126 (1995).

Charge to the jury that the defendant's refusal to take a requested chemical test "may be considered as positive evidence creating an inference that the test would show the presence of alcohol. However, such an inference may be rebutted" did not improperly shift the burden of proof to the defendant. *Bravo v. State*, 249 Ga. App. 433, 548 S.E.2d 129 (2001).

In convictions of driving while under

the influence, a jury charge stating that if the jury found that the officer erred in administering or interpreting the results of a field sobriety test, the evidence was to be given only the weight deemed appropriate, did not impermissibly shift the burden of proof to the defendant to prove that the tests were wrongly administered or analyzed. *Duprel v. State*, 301 Ga. App. 469, 687 S.E.2d 863 (2009).

Mandatory instruction that the influence of alcohol "shall be inferred" (rather than the permissive "may infer") was impermissibly burden-shifting; however, the erroneous charge did not require reversal since it was not relevant to any elements of the crime of driving with a blood-alcohol level in excess of the legal limit. *Ellerbee v. State*, 215 Ga. App. 102, 449 S.E.2d 874 (1994).

Charge in the language of O.C.G.A. § 40-6-392(b) that if the blood level exceeds certain amounts there shall be a presumption that the person was under the influence of alcohol as prohibited by provisions of subsection (a) of O.C.G.A. § 40-6-391 is impermissible burden shifting but, even if improperly given, it is not relevant to the determination of any crime defined in subsection (a) and does not require reversal. *Knapp v. State*, 229 Ga. App. 175, 493 S.E.2d 583 (1997).

No instruction on accident required. — In a defendant's trial for reckless driving and driving under the influence of alcohol to the extent that it was less safe to drive, arising out of an incident in which the defendant's car spun out of control and struck another car, the trial court did not err in refusing to give a jury instruction on the defense of accident under O.C.G.A. § 16-2-2; the defendant was not entitled to a jury instruction on that affirmative defense because the defendant did not admit to driving recklessly or under the influence of alcohol to the extent that it was less safe to drive. *Rutland v. State*, 282 Ga. App. 728, 639 S.E.2d 628 (2006).

Trial court did not err by refusing to give the defendant's requested charge on misfortune or accident because the defendant, who was charged with driving under the influence, reckless driving, and failure to maintain lane, was not entitled to a

Instructions to Jury (Cont'd)

charge that the accident was unavoidable; because the defendant did not admit to committing any act that constituted the offenses with which the defendant was charged, the defendant was not entitled to an instruction on accident. *Davis v. State*, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

Instruction regarding "inference" was error. — In a prosecution for driving under the influence -- less safe driver, it was error to charge to the jury that if the jury believed the defendant's alcohol concentration was .08 percent or more "it shall be inferred" that the defendant was under the influence of alcohol, and the giving of generalized instructions regarding the state's burden and the jury's responsibilities was insufficient to overcome the mandatory nature of the instruction. *Stepic v. State*, 226 Ga. App. 734, 487 S.E.2d 643 (1997).

Charge required on sufficiency of circumstantial evidence. — Entirely circumstantial evidence requires a charge on the sufficiency of circumstantial evidence to authorize the defendant's conviction in the absence of a timely written request. *Lyons v. State*, 90 Ga. App. 25, 81 S.E.2d 890 (1954) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Circumstantial evidence. — In a prosecution for driving under the influence of alcohol, the defendant was entitled to defendant's requested instruction on circumstantial evidence based on a reasonable hypothesis from the defendant's use of Benadryl that the defendant was not guilty of the crime charged. *Cato v. State*, 212 Ga. App. 417, 441 S.E.2d 900 (1994).

In a prosecution for driving under the influence of alcohol, evidence upon which an officer based the officer's opinion that the defendant was impaired and a less safe driver was circumstantial, and the failure to give a requested charge on former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) was reversible error. *Tomko v. State*, 233 Ga. App. 20, 503 S.E.2d 300 (1998).

After the court read the indictment to

the jury as well as the entire Code section, and when there was circumstantial evidence of marijuana metabolites in the blood, there was no reason to give so little credence to the ability of the jury to select that portion of the statute obviously applicable to the facts and issues presented for the jury's determination that a mistrial should be declared. *Chadwick v. State*, 236 Ga. App. 199, 511 S.E.2d 286 (1999).

Right to refuse tests. — Defendant's requested instruction regarding the defendant's right to refuse to take chemical or other tests and the exercise of that right was properly refused since other instructions relayed the same principles to the jury as covered in the requested charge. *White v. State*, 233 Ga. App. 276, 503 S.E.2d 891 (1998).

Horizontal gaze nystagmus test. — Charge on the scientific efficacy of the horizontal gaze nystagmus test in a prosecution for driving under the influence was not an erroneous expression of the court's opinion in violation of O.C.G.A. § 17-8-57. *Waits v. State*, 232 Ga. App. 357, 501 S.E.2d 870 (1998).

Defendant's challenge to horizontal gaze nystagmus (HGN) failed, and the conviction for drunk driving was upheld on appeal, because the HGN is an accepted, common procedure that has reached a state of verifiable certainty in the scientific community and is admissible as a basis upon which an officer can determine that a driver was impaired by alcohol. *Mullady v. State*, 270 Ga. App. 444, 606 S.E.2d 645 (2004).

Failure to charge on the presumption on nonimpairment contained at O.C.G.A. § 40-6-392(b)(1) was not harmful as that provision did not apply to the crime of driving with a blood-alcohol level in excess of the legal limit. *Ellerbee v. State*, 215 Ga. App. 102, 449 S.E.2d 874 (1994).

Failure to charge that manner of driving not unsafe not error. — It was not error to fail to charge that "it is a defense to a prosecution for driving under the influence that the person's manner of driving was not unsafe." *Cunningham v. State*, 221 Ga. App. 341, 471 S.E.2d 273 (1996).

Use of words "some alcohol" in jury instruction. — In the context of the en-

tire trial court's charge in proceeding when the defendant was convicted of driving under the influence of alcohol, the use of the word "some" in the jury instruction that "the essential ingredients of the offense are the driving or being in control of a moving vehicle by the accused at a time while under the influence of some alcohol" did not constitute harmful error since that instruction was followed by the instruction that "the operator of a motor vehicle is under the influence of alcohol when he is so affected by it as to make it less safe for him to drive, operate, or be in control of the vehicle than it would be if he were not affected by such alcohol." *Smitherman v. State*, 157 Ga. App. 526, 278 S.E.2d 107 (1981).

Although the word "some" is not found in O.C.G.A. § 40-6-391, the trial court does not err in charging that in order to find the defendant guilty, the jury must find "that at the time and place, he was under the influence of some intoxicating beverages." *Jones v. State*, 168 Ga. App. 106, 308 S.E.2d 209 (1983).

Charge on effect of alcohol appropriate. — Charge that the jury had to find "that the operator of a motor vehicle is under the influence of alcohol when he or she is so affected by the alcohol as to make that person a less safe driver than they would have been had they not consumed any alcohol at all" was a correct statement of law. *Brownlee v. State*, 225 Ga. App. 311, 483 S.E.2d 370 (1997).

Charge on effect of alcohol not required. — Trial court did not err in refusing to give the defendant's requested jury instruction that, to convict the defendant of driving under the influence of alcohol to the extent that it was less safe to drive in violation of O.C.G.A. § 40-6-391(a)(1), the defendant had to be so affected by the alcohol that the alcohol adversely affected the defendant's operation of the motor vehicle; § 40-6-391(a)(1) did not require that the defendant actually committed an unsafe act in order to be convicted of violating the statute. *Moran v. State*, 257 Ga. App. 236, 570 S.E.2d 673 (2002).

Non-moving vehicle. — It is not error to refuse to give a charge that "a defendant cannot be convicted of driving under the influence for operating a non-moving

vehicle." *Melendy v. State*, 202 Ga. App. 638, 415 S.E.2d 62 (1992).

Charging defendant for operating nonmoving vehicle. — Former proscription against merely operating a vehicle while under the influence of intoxicating liquor has been replaced by a proscription against driving or being "in actual physical control of any moving vehicle" while under the influence of alcohol or drugs; thus, a jury charge indicating the defendant could be convicted for operating a nonmoving vehicle was in error. *Carr v. State*, 169 Ga. App. 679, 314 S.E.2d 694 (1984).

Charge allowing conviction for nonmoving vehicle correct. — Court's failure to give a jury charge on the requirement that a driver be in actual physical control of a moving vehicle while under the influence of alcohol is proper when the court charges the jury on the subject matter of the requested charge and when the requested charge is argumentative and an incorrect interpretation of the law. *Phillips v. State*, 185 Ga. App. 54, 363 S.E.2d 283 (1987).

Court properly denied defendant's instruction on involuntary intoxication since, although the defendant produced evidence that the defendant was not aware that a prescribed medication could affect the defendant's ability to drive, there was no evidence that the defendant did not have sufficient mental capacity to distinguish between right and wrong by reason of the defendant's intoxication. *Flanders v. State*, 188 Ga. App. 98, 371 S.E.2d 918 (1988).

Charge on greater offense only. — Trial court properly refused to give a charge on reckless driving submitted by the defendant when the uncontradicted evidence showed completion of the greater offense of driving under the influence so that the charge on the lesser offense was not required. *Howard v. State*, 182 Ga. App. 403, 355 S.E.2d 772 (1987).

In convictions of driving while under the influence, a jury charge for the lesser included offense of attempted DUI was not required because the evidence showed the commission of the completed offense. *Duprel v. State*, 301 Ga. App. 469, 687 S.E.2d 863 (2009).

Instructions to Jury (Cont'd)

Charge as to criminal intent. — Because a defendant was charged with driving under the influence, the trial court properly instructed the jury that criminal intent had to be proved by the state in every prosecution and that criminal intent did not mean an intention to violate the law or to violate a penal statute, but simply meant to intend to commit the act which was prohibited by statute. Viewed in the statute's entirety, the charge was sufficient to inform the jury that the jury had to find that the defendant intended to evade the duty imposed by O.C.G.A. § 40-6-391 and that the jury had to find that the defendant knowingly drove while under the influence. *Cornwell v. State*, 283 Ga. 247, 657 S.E.2d 195 (2008).

In a prosecution for driving with an alcohol concentration greater than 0.08 grams, O.C.G.A. § 40-6-391(a)(5), a jury instruction that the state did not have to prove that the defendant intended to drive under the influence, nor that the defendant knew that the defendant was doing so, was proper viewed in the context of the charge as a whole which stated that criminal intent meant the intent to do the act which resulted in a violation of the law. *Goethe v. State*, 294 Ga. App. 232, 668 S.E.2d 859 (2008).

Jury in a defendant's trial for DUI in violation of O.C.G.A. § 40-6-391(a) was correctly charged that the defendant's intent to drive while intoxicated was immaterial because the evidence was undisputed that the defendant intentionally ingested alcohol, Xanax, and Ambien, then drove in an intoxicated state in the defendant's pajamas, although the defendant did not remember driving. *Myers v. State*, 302 Ga. App. 753, 691 S.E.2d 650 (2010).

Incomplete charge. — Trial court's charge to the jury "that a person shall not drive or be in actual physical control of any motor vehicle while under the influence of alcohol" was harmfully incomplete because the charge did not inform the jury that being under the influence of alcohol meant that consumption of alcohol had rendered the person a less safe driver. *Taylor v. State*, 184 Ga. App. 368, 361

S.E.2d 667, cert. denied, 184 Ga. App. 911, 361 S.E.2d 667 (1987).

Totality of charges were deemed adequate. — Because, in their totality, the jury charges given by the trial court covered substantially and adequately the principles contained in the two requested instructions cited by the defendant, the trial court did not err in refusing to give them in the exact language the defendant requested; hence, the appeals court rejected the defendant's contention that the jurors were left with insufficient guidance to evaluate the blood tests results or the quality of the blood test chain of custody. *Steinberg v. State*, 286 Ga. App. 417, 650 S.E.2d 268 (2007), cert. denied, 2008 Ga. LEXIS 113 (Ga. 2008).

Charging entire section. — Given defendant's crime scene admission of driving under the influence, there was no reasonable probability that the jury convicted the defendant of the offenses upon a basis not charged in the accusation; accordingly, that the superior court charged O.C.G.A. § 40-6-391(a) as a whole was no more than harmless error under the circumstances. *Marryott v. State*, 263 Ga. App. 65, 587 S.E.2d 217 (2003).

Crime committed prior to indictment. — Trial court did not err in instructing that the jury could find the defendant guilty if the jury found the defendant committed the charged offenses "at any time within two years immediately preceding the date of the swearing out of" the charges. *Horner v. State*, 240 Ga. App. 1, 522 S.E.2d 483 (1999).

Superfluous language in jury charge not harmful. — Although jury instructions concerning being a less safe driver under paragraph (a)(1)-(3) of O.C.G.A. § 40-6-391 and the inferences listed in O.C.G.A. § 40-6-392(b)(1) (see now O.C.G.A. § 40-6-392(b)(1), (2)) are superfluous in a prosecution under § 40-6-391 for driving while under the influence by having .12 percent or more alcohol in the blood, the additional language is not harmful when the jury is informed of the legal ramifications of a blood-alcohol content of over .12 percent and there is evidence that the defendant's blood-alcohol content was greater than .12 percent. *Courson v. State*, 184 Ga. App. 793, 363 S.E.2d 41 (1987).

Since the defendant was charged with driving under the influence by having 0.1 percent or more by weight of alcohol in the defendant's blood, jury instructions concerning being a less safe driver and the inferences derived therefrom were superfluous; however, since the jury was also informed of the legal ramifications of a blood-alcohol content of over 0.1 percent and there was evidence that the defendant's blood-alcohol content was greater than 0.1 percent, the additional language in the charge was not harmful to the defendant. *Frazier v. State*, 267 Ga. App. 682, 601 S.E.2d 145 (2004).

Repeated portions of jury charges covering legal principles relating to two different counts for which the defendant was prosecuted under O.C.G.A. § 40-6-391 did not confuse or mislead the jury or in any manner result in an unfair statement of the law. *Hawkins v. State*, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

"Recharge" not error. — Repetition of a sentence from subsection (a)(5) (now (a)(6)) of O.C.G.A. § 40-6-391 in response to a jury request for such did not serve to prejudice the minds of the jury, requiring no reversal. *Hill v. State*, 207 Ga. App. 65, 426 S.E.2d 915 (1993).

Burden of proof. — Trial court did not err by charging that the prosecution was not required to prove the prosecution's case to a mathematical certainty under paragraph (a)(4) of O.C.G.A. § 40-6-391 since the jury was not misled by a charge instructing the jury that the state was required to prove each material allegation of the accusation and every essential element of the crime beyond a reasonable doubt before the defendant could be convicted of the charge. *Brown v. State*, 201 Ga. App. 441, 411 S.E.2d 286 (1991).

Special verdict. — When an accusation was drawn in the conjunctive, charging the defendant with being a less safe driver and with having a blood alcohol count over 0.10, providing a verdict form that listed separately each of the two methods by which the defendant was accused of violations and instructing the jury to indicate "guilty" or "not guilty" as to each method, such verdict form was not a request for a special verdict in violation of O.C.G.A. § 17-9-2. *Dean v. State*, 232

Ga. App. 390, 501 S.E.2d 895 (1998).

Preliminary instruction was harmless error. — Trial court erred in mentioning the excluded results of a breath test when instructing the jury because the preliminary instruction was both unnecessary and improper, but the error was harmless; there was no reasonable probability that the preliminary instruction impacted the jury's verdict because the jury was presented with overwhelming evidence that the defendant was a less-safe driver including: (1) a video of the traffic stop, which showed the defendant's less-than-stellar performance on the field sobriety tests, the defendant's difficulty following instructions, and the defendant's occasionally belligerent demeanor; (2) the defendant's admission to consuming alcohol; (3) the officer's testimony regarding the defendant's traffic violation, the officer's observations during the stop, and the positive results of the alco-sensor test; and (4) similar-transaction evidence. *Hale v. State*, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

Correct jury charge. — When the court charged the jury: "If you find ... that the defendant was ... at the time of the operation of such automobile, under the influence of intoxicating liquors to the extent that it rendered his operation of such automobile less safe, then he would be deemed to be under the influence of intoxicating liquors," this is a correct statement of the law. *Maxwell v. State*, 97 Ga. App. 334, 103 S.E.2d 162 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Equal protection clause was not violated in charging the jury to convict if the defendant was under the influence of alcohol to the extent that it was "less safe" for defendant to drive, rather than if defendant was "rendered incapable of driving safely"; the standards were legally equivalent. *Johnson v. State*, 268 Ga. App. 426, 602 S.E.2d 177 (2004).

Trial court did not err in giving jury instructions in defendant's trial for DUI as an unsafe driver, in violation of O.C.G.A. § 40-6-391(a)(1), and in refusing to give the defendant's requested jury instruction as the charge by the court did not differ in substance from that re-

Instructions to Jury (Cont'd)

quested by the defendant, and the standard used for offenses under O.C.G.A. § 40-6-391(b) had been held “equivalent,” such that there was no disparate treatment suffered by the defendant when the court gave the “less safe” jury charge rather than the “rendered incapable of driving safely” jury charge. *Drogan v. State*, 272 Ga. App. 645, 613 S.E.2d 195 (2005).

Trial court properly charged the jury with respect to driving under the influence that “a person (should) not drive or be in actual physical control of any moving vehicle while under the influence of alcohol to the extent that it (was) less safe for that person to drive.” *Furlow v. State*, 276 Ga. App. 332, 623 S.E.2d 186 (2005).

In a prosecution for driving with an alcohol concentration greater than 0.08 grams, O.C.G.A. § 40-6-391(a)(5), the trial court properly instructed the jury that equipment used to measure alcohol content that was approved by the Georgia State Crime Lab was considered accurate if properly operated as this was simply an explanation of O.C.G.A. § 40-6-392(a)(1)(A). *Goethe v. State*, 294 Ga. App. 232, 668 S.E.2d 859 (2008).

Trial court did not err in charging the jury during the defendant's trial for driving under the influence of alcohol to the extent that it was less safe for the defendant to drive because the challenged charge immediately followed a proper charge regarding the implications of a defendant's refusal to submit to tests, and the defendant failed to show what harm the defendant suffered as the result of the giving of the jury instruction; the charge was adjusted to the evidence because the testimony adduced at trial showed that the defendant was speeding immediately prior to the defendant's arrest, and the charge properly left the determination of whether the defendant was impaired in the hands of the jury. *Crusselle v. State*, 303 Ga. App. 879, 694 S.E.2d 707 (2010).

Trial court did not err in refusing to give the defendant's requested charges concerning the reliability and possible malfunctioning of breath testing machines because the trial court's general charge on

the state-administered test adequately instructed the jury on the fallibility of those machines. *Holowiak v. State*, 308 Ga. App. 887, 709 S.E.2d 39, overruled on other grounds, *Davenport v. State*, 289 Ga. 399, 711 S.E.2d 699 (2011); vacated in part, 316 Ga. App. 328, 729 S.E.2d 486 (2012).

Charges that were not misleading or confusing were not reversible error. — Failure to instruct on issues that were not material to the case and slips of the tongue in instructions that did not clearly mislead or confuse the jury were not reversible error regarding the defendant's convictions for driving while under the influence of alcohol to the extent that the defendant was a less safe driver. *Worthman v. State*, 266 Ga. App. 208, 596 S.E.2d 643 (2004).

Defendant's less-safe DUI conviction was upheld on appeal as a jury charge on criminal intent, and the trial court's use of the term “sober,” was not confusing or erroneous, and the appeals court refused to speculate that the instruction led the jury to believe that it could convict based on the defendant's consumption of any amount of an alcoholic beverage. *McWilliams v. State*, 287 Ga. App. 585, 651 S.E.2d 849 (2007).

In convictions of driving while under the influence, a jury charge did not create ambiguity and confusion, requiring reversal, by using the word “anywhere” rather than the word “elsewhere” because under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia. *Duprel v. State*, 301 Ga. App. 469, 687 S.E.2d 863 (2009).

Trial court did not err in refusing to charge the jury that the presence of alcohol in the body did not support an inference that the defendant was impaired and that the jury had to evaluate evidence of how a preexisting condition could affect physical appearance or performance on roadside sobriety evaluations because the trial court's charges did not mislead or confuse the jury, nor did the trial court commit error by declining to give the defendant's requested charges; the trial court instructed the jury that DUI per se required no proof of impairment, which substantially covered the same principal contained in one of the defendant's re-

quested charges, and the trial court adequately covered the evidentiary principles underlying the defendant's other requested charge in the court's general instructions regarding the definition of evidence, how to evaluate conflicting evidence, and impeachment. *Holowiak v. State*, 308 Ga. App. 887, 709 S.E.2d 39, overruled on other grounds, *Davenport v. State*, 289 Ga. 399, 711 S.E.2d 699 (2011); vacated in part, 316 Ga. App. 328, 729 S.E.2d 486 (2012).

Contingent jury charges on first- and second-degree vehicular homicide upheld. — Trial court did not err in charging the jury on vehicular homicide, specifically explaining that if the jury found the defendant guilty of either DUI or reckless driving, and if the jury also found the defendant guilty of vehicular homicide, it followed that the defendant had to be guilty of first-degree, and not second-degree, vehicular homicide. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Justification and accident instructions not warranted. — In a prosecution for driving under the influence and making an improper lane change, because the defendant did not request instructions on accident and justification, the trial court did not err in failing to give the instruction; moreover, because the jury was charged on involuntary intoxication, the failure to charge on accident was not harmful as a matter of law. *Walker v. State*, 280 Ga. App. 393, 634 S.E.2d 177 (2006).

Disclosure by jury of section upon which verdict based. — There was no error in the court's failure to instruct the jury to disclose whether their guilty verdicts (of vehicular homicide) were premised upon the defendant's violation of O.C.G.A. § 40-6-390 or O.C.G.A. § 40-6-391, or both, since there was evidence to warrant the jury's finding of a violation of either section, or both. *Deshazier v. State*, 155 Ga. App. 526, 271 S.E.2d 664 (1980).

Refusal not evidence of the presence of alcohol. — Trial court erred in instructing the jury that the defendant's refusal to submit to a chemical test of defendant's breath could be considered as

positive evidence creating an inference that the test would show the presence of alcohol or other prohibited substances which impaired the defendant's driving as the instruction improperly allowed the jury to infer impaired driving from the mere presence of alcohol; the error was not harmless since the evidence of impairment was not overwhelming and since the charge could have misled the jury into thinking that the state met the state's burden of proving impaired driving under O.C.G.A. § 40-6-391(a)(1) simply by showing the refusal of chemical testing. *Baird v. State*, 260 Ga. App. 661, 580 S.E.2d 650 (2003).

Trial court did not improperly instruct the jury on each of the elements of O.C.G.A. § 40-6-391, including intoxication by toxic vapors, as the charge stated the law accurately, and the complained-of language concerning toxic vapors was mere surplusage. *Rylee v. State*, 288 Ga. App. 784, 655 S.E.2d 239 (2007).

Endangering a Child

Merger with endangering a child prohibited. — Despite the defendant's contrary contention, the trial court did not err in failing to merge a DUI conviction with a conviction for endangering a child by DUI for the purposes of prosecution and sentence as O.C.G.A. § 40-6-391(l) specifically prohibited the same, and O.C.G.A. § 16-12-1(d) provided independent provisions for punishment. *Slayton v. State*, 281 Ga. App. 650, 637 S.E.2d 67 (2006).

With regard to a defendant's convictions for reckless driving, less safe driving while intoxicated (DUI), and child endangerment by DUI, the trial court properly refused to merge the two counts for sentencing purposes because O.C.G.A. § 40-6-391 unambiguously prevented merger and the rule of lenity did not apply since the two code provisions did not prohibit the same conduct. *Monahan v. State*, 292 Ga. App. 655, 665 S.E.2d 387 (2008).

Sentence and Punishment

Enhanced sentencing provisions not applied retroactively. — Defendant, who committed a DUI offense on

Sentence and Punishment (Cont'd)

November 11, 1990, was improperly subjected to the enhanced sentencing provisions contained in subparagraph (c)(3)(A) of O.C.G.A. § 40-6-391, which did not become effective until January 1, 1991. *Holtapp v. City of Fayetteville*, 208 Ga. App. 606, 431 S.E.2d 403 (1993).

Construed with § 40-5-63(a). — O.C.G.A. § 40-5-63(a) effectuates suspension or revocation of a driver's license automatically upon a conviction for driving under the influence, notice of suspension being the trial for the driving offense. *Eppinger v. State*, 236 Ga. App. 426, 512 S.E.2d 320 (1999).

O.C.G.A. § 40-6-391(c) is not an enhanced penalty statute because the statute neither increases the maximum confinement authorized nor converts a misdemeanor offense into a felony. Thus, consideration of a person's prior uncounseled convictions for driving under the influence of alcohol in determining an appropriate sentence does not violate any constitutional right to counsel. *Moore v. State*, 181 Ga. App. 548, 352 S.E.2d 821, cert. denied, 484 U.S. 904, 108 S. Ct. 247, 98 L. Ed. 2d 204 (1987).

Sentence for single violation after more than one conviction. — Jury may find a defendant guilty of violating both paragraphs (a)(1) and (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 based on a single incident, but a defendant can be sentenced for only one DUI violation. *Tomlin v. State*, 184 Ga. App. 726, 362 S.E.2d 489 (1987).

Court erred in entering convictions and sentencing the defendant on two DUI charges, under paragraphs (a)(1) and (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 since both charges were predicated on the same conduct. *O'Dell v. State*, 200 Ga. App. 655, 409 S.E.2d 54, cert. denied, 200 Ga. App. 896, 409 S.E.2d 54 (1991).

Forfeiture of convictions of defendant on two DUI charges, under paragraphs (a)(1) and (a)(5) of O.C.G.A. § 40-6-391, because it was apparent from the transcript that for purposes of sentencing the trial judge considered the charges alternative and sentenced the defendant for only one offense, the "per se" DUI conviction was

vacated and the "less safe" DUI conviction affirmed, with no remand. *Hewett v. State*, 244 Ga. App. 112, 534 S.E.2d 867 (2000).

O.C.G.A. § 40-6-391(a) establishes a single crime of driving under the influence (DUI) and § 40-6-391(a)(1) through (a)(5) merely define different ways of committing that one crime. Thus, a defendant who was found guilty of violating both § 40-6-391(a)(1) and (a)(5) could only be convicted and sentenced for one DUI violation. *Fowler v. State*, 294 Ga. App. 864, 670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

High misdemeanor charge requires previous convictions within five years. — State lacked statutory authority to charge a high and aggravated misdemeanor because both of the defendant's previous DUI convictions were not within five years of the present charge. *State v. Bangle*, 209 Ga. App. 208, 433 S.E.2d 372 (1993).

High misdemeanor charge required. — Defendant's third conviction within five years for driving under the influence was classified as a high and aggravated misdemeanor, and the defendant could not be sentenced to imprisonment in the state penal system. *Floyd v. State*, 227 Ga. App. 873, 490 S.E.2d 542 (1997).

Merger into vehicular homicide. — Defendant's reckless driving, red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant's striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

When offenses merge, later conviction vacated. — When the offenses charged under paragraphs (a)(1) and (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 were based on the same conduct, the offenses merged under the substantive double jeopardy rule, which limits multiple

convictions or punishments for crimes arising from the same criminal conduct, requiring vacating of the conviction obtained under paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391. *Hoffman v. State*, 208 Ga. App. 574, 430 S.E.2d 886 (1993).

Harmless error because of merger.

— Defendant's count for driving under the influence (DUI) less safe, in violation of O.C.G.A. § 40-6-391(a)(1), was merged into the defendant's DUI *per se* conviction. In light of the merger, the DUI less safe count was void and any error as to that count was harmless. *Greene v. State*, 312 Ga. App. 666, 722 S.E.2d 77 (2011), cert. denied, No. S12C0516, 2012 Ga. LEXIS 670 (Ga. 2012).

Error in sentencing defendant on lesser offenses.

— Trial court erred in sentencing the defendant on the lesser offenses of reckless driving and driving under the influence while the trial court also sentenced the defendant on the greater offense of homicide by vehicle in the first degree, which included the lesser offenses. Had the jury revealed which of the lesser offenses served as the foundation for the homicide verdict a sentence on the remaining lesser offense might have been appropriate, but as such information did not appear in the record the defendant may not be sentenced for either of the lesser included offenses of violation of O.C.G.A. §§ 40-6-390 and 40-6-391. *McNabb v. State*, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

Trial court properly considered mitigating and aggravating circumstances brought to the court's attention for purposes of imposing sentence within the range of punishment allowed by this statute, including driving history, which included several prior misdemeanor traffic accusations to which the defendant had pled guilty even though the defendant had never served time in confinement as a result of those pleas. *Dotson v. State*, 179 Ga. App. 233, 345 S.E.2d 871 (1986).

In sentencing the defendant on a charge of driving under the influence, a sentence within the range permitted for the first conviction within the previous five years was authorized, and the court properly reviewed the defendant's entire driving record, including two prior DUI convictions

that did not occur within the past five years along with three other traffic violations within five years, before accepting the defendant's plea of *nolo contendere*. *Millwood v. State*, 213 Ga. App. 419, 447 S.E.2d 343 (1994).

Duty of court to seize license and temporary permit pending appeal.

— Upon conviction for driving under the influence, the defendant was properly required to surrender the defendant's driver's license and temporary permit to the trial court pending appeal; the seizure and forwarding of the license to the Department of Public Safety was not part of the defendant's sentence or a condition of defendant's bond but a requirement imposed by statute on the court. *Wells v. State*, 212 Ga. App. 15, 440 S.E.2d 692 (1994).

First offender treatment unavailable.

— Phrase "relating to probation of first offenders" in O.C.G.A. § 40-6-391(f) refers to the general title of O.C.G.A. Art. 3, Ch. 8, T. 42, and does not purport to limit the prohibition of first offender treatment only to convictions for driving under the influence when probation is imposed. *Sims v. State*, 214 Ga. App. 443, 448 S.E.2d 77 (1994).

O.C.G.A. § 40-6-391(f) did not violate equal protection under the Fourteenth Amendment or Ga. Const. 1983, Art. I, Sec. I, Para. II by excluding DUI offenses from First Offender Act, O.C.G.A. § 42-8-60 et seq., coverage. The defendant did not show the absence of a rational relationship between the state's compelling interest in protecting the public's safety and the classification; the defendant's equal protection argument boiled down to no more than the claim that the legislature made a bad policy judgment about which offenders should be eligible for First Offender Act treatment. *Rhodes v. State*, 283 Ga. 361, 659 S.E.2d 370 (2008).

Sentence to serve 24 hours in jail.

— Since, under a plea agreement, the defendant pled guilty to driving while a less safe driver and the state *nolle prosequi* the charge of driving with an alcohol concentration (BAC) of 0.10 or greater, the trial court was required to sentence the defendant to serve at least 24 hours in jail

Sentence and Punishment (Cont'd)

pursuant to subparagraph (c)(1)(B) of O.C.G.A. § 40-6-391 because there was lawful evidence that the defendant drove with a BAC greater than .10. *Phillips v. State*, 241 Ga. App. 689, 527 S.E.2d 283 (1999).

Fines. — Because the defendant's fine was not assessed as a condition of probation, but as a part of the defendant's DUI sentence, the trial court did not err in denying the defendant's motion to negate or suspend the fine when the defendant's probation was revoked. *Rouse v. State*, 256 Ga. App. 579, 569 S.E.2d 261 (2002).

Since no fine was imposed on the driving under the influence offense that violated O.C.G.A. § 40-6-391, the \$100 brain/spinal cord fee imposed under O.C.G.A. §§ 15-21-149 and 15-21-150 and the \$25 driving under the influence victim surcharge imposed under O.C.G.A. §§ 15-21-110 and 15-21-112(a) should not have been imposed under O.C.G.A. §§ 15-21-112 and 15-21-149(a) because those were contingent upon the imposition of a fine. *Johnson v. State*, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Crime lab fee of \$25 should not have been imposed under O.C.G.A. § 42-8-34(d)(2) in the driving under the influence case under O.C.G.A. § 40-6-391 because the defendant was not sentenced to probation on the driving under the influence count. *Johnson v. State*, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Sentence proper. — Sentence of 12 months' probation, a \$1,000 fine, and 300 hours of community service is within the limits established by O.C.G.A. § 40-6-391 for driving under the influence of alcohol. *Cothran v. State*, 177 Ga. App. 58, 338 S.E.2d 513 (1985).

When the defendant pled guilty to two counts each of driving under the influence of alcohol (DUI) and driving with a suspended license, and one count each of driving without proof of insurance, improper lane usage, unlawful use of a license, giving a false name, impeding traffic, and violation of a county open container ordinance, and was sentenced on the DUI counts to a 12-month consecutive term, a \$1,000 fine, and a \$25 as-

essment for costs of publishing defendant's photo and, on the remaining charges, to concurrent 12-month terms and a \$200 fine for driving without proof of insurance, the sentence was not unconstitutionally excessive. *McClure v. State*, 218 Ga. App. 365, 460 S.E.2d 884 (1995).

Sentence of 30 days in custody, 11 months probation, 40 hours of community service, and fines totaling \$2,000 on conviction of driving under the influence of alcohol, driving with an unlawful alcohol concentration, and failure to maintain lane was not excessive. *Gidey v. State*, 228 Ga. App. 250, 491 S.E.2d 406 (1997).

Absent inclusion of a record and an express authority to the contrary, the trial judge was authorized to impose attendance at the Chatham County DUI court treatment program as a condition of the defendant's probation; further, the imposition was not a denial of the defendant's equal protection rights in that nonresidents were not required to attend, especially and in light of the fact that the defendant failed to show any evidence to show the genesis, nature, or content of the program of which the defendant complained. *Kellam v. State*, 271 Ga. App. 125, 608 S.E.2d 729 (2004).

Defendant's sentence was not excessive because the trial court orally sentenced the defendant to a combination of 100 days of confinement, 60 days of house arrest, and 12 months of probation for misdemeanor driving under the influence; an oral declaration of a sentence was not the sentence of the court and the sentence signed by the trial court properly sentenced the defendant to confinement for 12 months (to serve 100 days) and the remainder probated (60 days thereof in house arrest). *Kimbrell v. State*, 280 Ga. App. 867, 635 S.E.2d 237 (2006).

House arrest insufficient. — Upon the defendant's conviction for driving under the influence of alcohol, the trial court erred by not sentencing the defendant to at least 72 hours confinement as required by O.C.G.A. § 40-6-391(c)(2)(B), and house arrest was not incarceration, as such limited confinement did not constitute a continuous and uninterrupted custody in a jail or penitentiary. *Pierce v. State*, 278 Ga. App. 162, 628 S.E.2d 235 (2006).

Sentence improper. — Since the court could not determine from the record whether the trial court imposed a permissible fine plus permissible costs and penalties, or whether an impermissible fine was in fact imposed, and because any uncertainty or ambiguity ought to be resolved in favor of imposing the lesser penalty, the portion of the fine in excess of the \$1,000 maximum was vacated. *Morgan v. State*, 212 Ga. App. 394, 442 S.E.2d 257 (1994).

Sentence of 10 days in jail followed by 12 months probation for conviction of driving under the influence was improper. *Kovacs v. State*, 227 Ga. App. 870, 490 S.E.2d 539 (1997).

Sentence imposed under O.C.G.A. § 40-6-391(a)(5) for driving a moving vehicle while defendant's alcohol concentration was more than 0.10 grams had to be vacated as the trial court neither merged that count into the other charged count nor indicated to which count the court's sentence applied; thus, the sentence imposed under that section was improper. *Schoolfield v. State*, 251 Ga. App. 52, 554 S.E.2d 181 (2001).

Because the trial court erred in failing to sentence a defendant to the mandatory minimum period of imprisonment of 24 hours, as specified by O.C.G.A. § 40-6-391(c)(1)(B), the sentence imposed was vacated, and a resentencing was ordered. *State v. Dyer*, 275 Ga. App. 657, 621 S.E.2d 615 (2005).

Given that a charge of DUI served as the predicate act underlying a charge of serious injury by vehicle, thus constituting a lesser included crime of the serious injury by vehicle, O.C.G.A. § 16-1-7(a) barred conviction of and punishment for both; hence, in light of this incongruence, defendant's DUI conviction and sentence, as well as the sentence for serious injury by vehicle, were vacated. *Hannah v. State*, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

Sentence for homicide by vehicle. — Upon conviction of the defendant of three counts of homicide by vehicle (O.C.G.A. § 40-6-393) through a violation of O.C.G.A. § 40-6-391, it was not a violation of double jeopardy to sentence the defendant to 15 years for each of the homicide counts. *Cox v. State*, 243 Ga.

App. 668, 533 S.E.2d 435 (2000).

DUI acquittal/vehicular homicide conviction. — Acquittal on a secondary charge of driving while under the influence of drugs did not preclude conviction for vehicular homicide by reckless driving since sufficient facts were otherwise advanced showing the defendant had attempted to pass in a no-passing lane and was driving on the wrong side of the road. *Hill v. State*, 207 Ga. App. 65, 426 S.E.2d 915 (1993).

Consecutive sentence/other offenses. — In sentencing defendant on conviction of two counts of endangering a child, the court erred in imposing sentences of 12 months on the first count, consecutive to defendant's 12-month sentence for driving under the influence, and, on the second count, 12 months' probation consecutive to the sentence on the first count. *Guest v. State*, 229 Ga. App. 627, 494 S.E.2d 523 (1998).

Sentencing upon multiple convictions. — Trial court erred in sentencing the defendant to three consecutive twelve month sentences for defendant's three driving under the influence convictions. *Taylor v. State*, 238 Ga. App. 753, 520 S.E.2d 267 (1999).

Trial court properly sentenced the defendant to a term of imprisonment for 12 months as the instant offense was the defendant's third driving under the influence (DUI) in five years, and the defendant's thirteenth DUI overall, and O.C.G.A. § 40-6-391(c)(3) mandated that for a third or subsequent driving under the influence violation within a five-year period, an individual would be punished by a mandatory period of imprisonment of not less than 120 days nor more than 12 months. *Branton v. State*, 258 Ga. App. 221, 573 S.E.2d 475 (2002).

DUI probation convictions on non-DUI offenses. — Special probation conditions requiring that the defendant complete a driving under the influence risk reduction course under O.C.G.A. § 40-6-391(c), perform 40 hours of community service under O.C.G.A. § 40-6-391(c), and pay a \$25 photograph fee under O.C.G.A. § 40-6-391(j)(1), (2) were not an abuse of discretion despite the fact that the conditions of probation were

Sentence and Punishment (Cont'd)

not imposed upon the defendant's driving under the influence conviction, for which probation was not imposed, but were instead imposed on the defendant's sentence of probation on the related convictions; while the defendant claimed that the conditions were peculiar to a driving under the influence conviction, the conditions were reasonably related to the nature of the offenses and the rehabilitative goals of probation pursuant to O.C.G.A. § 42-8-35 as all of the conditions had rehabilitative value, the photograph fee also served the purpose of protection of society, and the driving under the influence course was relevant since the defendant was sentenced to a driving under the influence charge in the same case and had a lengthy driving under the influence history. *Johnson v. State*, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Imposition of ignition interlock device on second-time DUI offender mandatory. — O.C.G.A. § 42-8-111 is plain and susceptible of only one natural and reasonable construction, and that is that "shall" means that there is no discretion in the trial court to consider whether to impose an ignition interlock device as a condition of probation for a second time DUI offender, absent a showing of financial hardship; accordingly, a trial court erred in not imposing that condition of probation on the defendant, who had previously been convicted of a DUI offense and who entered a negotiated plea to driving under the influence of alcohol to the extent that the defendant was a less safe driver in violation of O.C.G.A. § 40-6-391(a)(1). *State v. Villella*, 266 Ga. App. 499, 597 S.E.2d 563 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Nov.-Dec. Sess., p. 556, are included in the annotations for this Code section.

Time of applicability. — Provisions of O.C.G.A. § 40-6-391 which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52.

Venue. — Motorist is subject to charges of violating Ga. L. 1974, p. 633, § 1 wherever in Georgia the motorist happens to be operating a motor vehicle while the motorist is intoxicated, including on a federal military installation, provided, of course, that federal law does not preempt the operation of state and local laws. 1976 Op. Att'y Gen. No. 76-13 (see O.C.G.A. § 40-6-391).

Right to counsel. — Defendants who receive active sentences in accordance with subsection (c) of O.C.G.A. § 40-6-391 are constitutionally entitled to counsel,

but may voluntarily waive this right. 1984 Op. Att'y Gen. No. U84-2.

Suspension or cancellation of licenses of those convicted. — Although not authorized under O.C.G.A. § 40-6-391 or O.C.G.A. § 17-10-3 to suspend or cancel licenses of those convicted of driving under the influence of drugs or intoxicants, a judge may still do so by virtue of authority granted in former Code 1933, § 92A-9908; furthermore, a judge may sentence a defendant to either, but not both, a suspended or probated sentence, which may be properly conditioned upon payment of a fine. 1974 Op. Att'y Gen. No. U74-78 (see O.C.G.A. § 40-5-54).

Judge may probate fine and sentence. — That portion of subsection (c) of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-391) which used the word "shall," authorizing the imposition of a 90-day penalty, was mandatory and cannot be construed to mean that the court is vested with discretion in imposing the minimum 90-day sentence; however, former Code 1933, § 27-2506 (see O.C.G.A. § 17-10-3), relating to punishment of misdemeanors, permitted a judge to impose, in addition to or instead of any other penalty provided

for the punishment of a misdemeanor involving a traffic offense, probation or suspension of all or any part of a penalty upon such terms and conditions as may be prescribed by the judge; therefore, a judge imposing sentence pursuant to subsection (c) may probate either the fine or the sentence, as well as both the fine and the sentence. 1974 Op. Att'y Gen. No. U74-102 (rendered prior to 1983 amendment).

Shortest serveable jail term. — Shortest period of imprisonment which must actually be served in jail pursuant to subsection (c) of O.C.G.A. § 40-6-391 is that period of time which may not be suspended, stayed, or probated according to the statute. 1984 Op. Att'y Gen. No. U84-2.

Probation for violations of local ordinances. — Municipal and recorder's courts are without authority to place individuals on state supervised probation for violations of local ordinances adopting the provisions of O.C.G.A. § 40-6-391, although probate courts hearing cases brought pursuant to the state statute do have the power to probate as a limited

exception to the prohibition of O.C.G.A. § 42-8-34. 1983 Op. Att'y Gen. No. 83-73.

Payment of fine. — Defendant is obligated to pay the total amount of the defendant's fine imposed pursuant to subsection (c) of O.C.G.A. § 40-6-391, regardless of the length of the sentence of imprisonment imposed contemporaneously or the portion of that sentence of imprisonment which is actually served in jail. 1984 Op. Att'y Gen. No. U84-2.

Person who removes intoxicated driver from the scene before the officers can investigate can be charged as an accessory after the fact and as a principal in the crime of driving under the influence of intoxicating liquor. 1963-65 Op. Att'y Gen. p. 473.

Revocation for out-of-state convictions. — Department of Public Safety is within the department's authority to revoke driver's license for out-of-state convictions; provided, however, such convictions are for offenses which would be grounds for revocation if committed in Georgia. 1963-65 Op. Att'y Gen. p. 524.

For legal status and effect of alcolyzer test, see 1972 Op. Att'y Gen. No. 72-46.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 336, 337, 356.

Am. Jur. Proof of Facts. — Defense to Charge of Driving Under the Influence of Alcohol, 17 POF2d 1.

Punitive Damages in Motor Vehicle Litigation — Intoxicated Driver, 1 POF3d 1.

Negligent Failure to Detain Intoxicated Motorist, 1 POF3d 545.

Liability of Social Host for Negligent Driving of Intoxicated Adult Guest, 3 POF3d 697.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 POF3d 229.

Unreliability of the Horizontal Gaze Nystagmus Test, 4 POF3d 439.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 POF3d 459.

Punitive Damages in Motor Vehicle Litigation — Intoxicated Driver, 18 POF3d 1.

Proof that Driver Was "Operating" Motor Vehicle While Intoxicated, 61 POF3d 115.

Am. Jur. Trials. — The Impaired Driver — Ascertaining Physical Condition, 4 Am. Jur. Trials 615.

Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123.

Failure to Protect Public From an Intoxicated Driver, 34 Am. Jur. Trials 499.

Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79.

Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1.

Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213.

C.J.S. — 61A C.J.S., Motor Vehicles, § 1574 et seq..

ALR. — Driving automobile while intoxicated as a substantive criminal offense, 42 ALR 1498; 49 ALR 1392; 68 ALR 1356; 142 ALR 555.

Constitutionality and effect of statute

relating to civil liability of person driving automobile while under influence of liquor, 56 ALR 327.

What conduct in driving an automobile amounts to wantonness, willfulness, or the like, precluding defense of contributory negligence, 119 ALR 654.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 ALR2d 1146.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense, 16 ALR3d 1373.

Automobiles: driving under the influence, or when addicted to the use, of drugs as criminal offense, 17 ALR3d 815.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 ALR3d 938.

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver, 72 ALR3d 325.

What amounts to violation of drunken-driving statute in officer's "presence" or "view" so as to permit warrantless arrest, 74 ALR3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance, 93 ALR3d 7.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 ALR3d 572.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR4th 1252.

Admissibility in criminal case of blood-alcohol test where blood was taken despite defendant's objections or refusal to submit to test, 14 ALR4th 690.

Failure to restrain drunk driver as ground of liability of state or local government unit or officer, 48 ALR4th 320.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage, 54 ALR4th 149.

Snowmobile operation as DWI or DUI, 56 ALR4th 1092.

Horizontal gaze nystagmus test: use in impaired driving prosecution, 60 ALR4th 1129.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 ALR4th 16.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 ALR4th 272.

Driving while intoxicated: "choice of evils" defense that driving was necessary to protect life or property, 64 ALR4th 298.

Cough medicine as "intoxicating liquor" under DUI statute, 65 ALR4th 1238.

Horseback riding or operation of horse-drawn vehicle as within drunk driving statute, 71 ALR4th 1129.

Operation of bicycle as within drunk driving statute, 73 ALR4th 1139.

Operation of mopeds and motorized recreational two-, three-, and four-wheeled vehicles as within scope of driving while intoxicated statutes, 32 ALR5th 659.

Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication — post-Sitz cases, 74 ALR5th 319.

Validity, construction, and application of statute permitting forfeiture of motor vehicle for operating while intoxicated, 89 ALR5th 539.

Clause in life, accident, or health policy excluding or limiting liability in case of insured's use of intoxicants or narcotics, 100 ALR5th 617.

Validity, construction, and operation of school "zero tolerance" policies towards drugs, alcohol, or violence, 117 ALR5th 459.

Vertical gaze nystagmus test: Use in impaired driving prosecution, 117 ALR5th 491.

Claim of diabetic reaction or hypoglycemia as defense in prosecution for driving while under influence of alcohol or drugs, 17 ALR6th 757.

Validity, construction, and application of state "zero tolerance" laws relating to underage drinking and driving, 34 ALR6th 623.

Assimilation, under assimilative crimes act (18 U.S.C.A. § 13), of state statutes relating to driving while intoxicated or under influence of alcohol, 175 ALR Fed. 293.

40-6-391.1. Entry of plea of nolo contendere; order to attend alcohol and drug course.

(a) The decision to accept a plea of nolo contendere to a charge of violating Code Section 40-6-391 shall be at the sole discretion of the judge but, if such plea is accepted, the penalties provided for in subsection (c) of Code Section 40-6-391 shall be imposed; provided, however, that no such plea of nolo contendere shall be accepted if the person charged with violating Code Section 40-6-391 had an alcohol concentration of more than 0.15 at any time within three hours after driving or being in control of any moving vehicle from alcohol consumed before such driving or being in control ended.

(b) If the defendant has not been convicted of or had a plea of nolo contendere accepted to a charge of violating Code Section 40-6-391 within the previous five years and if the plea of nolo contendere shall be used as provided in paragraph (1) of subsection (a) of Code Section 40-5-63, no such plea shall be accepted unless, at a minimum, the following conditions are met:

(1) The defendant has filed a verified petition with the court requesting that such plea be accepted and setting forth the facts and special circumstances necessary to enable the judge to determine that accepting such plea is in the best interest of justice; and

(2) The judge has reviewed the defendant's driving records that are on file with the Department of Driver Services.

(c) The judge, as part of the record of the disposition of the charge, shall set forth, under seal of the court, his or her reasons for accepting the plea of nolo contendere.

(d) The record of the disposition of the case, including the ruling required in subsection (c) of this Code section, shall be forwarded to the Department of Driver Services within ten days after disposition.

(e) If a plea of nolo contendere is accepted under the conditions set forth in subsection (b) of this Code section, the defendant's driver's license shall be forwarded to the Department of Driver Services as provided in subsection (c) of Code Section 40-5-67. (Code 1981, § 40-6-391.1, enacted by Ga. L. 1983, p. 1000, § 13; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 1154, § 8; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1886, § 9; Ga. L. 1992, p. 2564, § 12; Ga. L. 1992, p. 2785, § 25; Ga. L. 1994, p. 831, § 2; Ga. L. 1994, p. 1600, § 9; Ga. L. 1997, p. 760, § 24; Ga. L. 2000, p. 951, § 5A-12; Ga. L. 2005, p. 334, § 18-16/HB 501.)

Editor's notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of

arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo

contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the Code section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the

"Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992).

JUDICIAL DECISIONS

Judge under no obligation to accept nolo contendere plea simply because the petition is acceptable on the petition's face. *Robinson v. State*, 173 Ga. App. 285, 326 S.E.2d 245 (1985).

Cited in *Wessels v. State*, 169 Ga. App. 246, 312 S.E.2d 361 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Time of applicability. — Provisions of O.C.G.A. § 40-6-391.1 which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to the defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52.

Selection of driver improvement school. — Although O.C.G.A.

§ 40-6-391.1 requires that a judge who accepts a plea of nolo contendere must order the defendant to attend a driver improvement school certified by the commissioner of the Department of Public Safety, the statute does not deprive the judge of all discretion to designate a particular driver improvement school so long as the designated school is chosen from among those certified. 1983 Op. Att'y Gen. No. U83-68.

40-6-391.2. Seizure and forfeiture of motor vehicle operated by habitual violator.

(a) Except as provided in this Code section, any motor vehicle operated by a person who has been declared a habitual violator for three violations of Code Section 40-6-391 and whose license has been revoked and who is arrested and charged with a violation of Code Section 40-6-391, is declared to be contraband and subject to forfeiture to the state, as provided in this Code section, provided that said forfeiture shall not be absolute unless the defendant is finally convicted of such offense.

(b) Any motor vehicle subject to forfeiture under subsection (a) of this Code section shall be seized immediately upon discovery by any law enforcement officer, peace officer, or law enforcement agency of this state or any political subdivision thereof who has the power to make arrests and whose duty it is to enforce this article, that said motor vehicle has been declared contraband. Said motor vehicle shall be delivered within 20 days to the district attorney whose circuit includes the county in which a seizure is made or to his duly authorized agent. At any time subsequent to the seizure, the chief officer of the seizing agency, his designee, or the district attorney may release the vehicle upon bond being posted in like manner as authorized in subsection (e) of this Code section.

(c) Within 60 days from the date of the seizure, the district attorney of the judicial circuit, or the director on his behalf, shall cause to be filed in the superior court of the county in which the motor vehicle is seized or detained an action for condemnation of such motor vehicle. The proceedings shall be brought in the name of the state by the district attorney of the circuit in which the motor vehicle was seized, and the action shall be verified by a duly authorized agent of the state in a manner required by the law of this state. The action shall describe the motor vehicle and state its location, present custodian, and the name of the owner, if known, to the duly authorized agent of the state; allege the essential elements of the violation which is claimed to exist; and conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such an action, the court shall promptly cause process to issue to the present custodian in possession of the motor vehicle described in the action, commanding him to seize the motor vehicle in the action and to hold that motor vehicle for further order of the court. The owner, lessee, or any person having a duly recorded security interest in or lien on such motor vehicle shall be notified by any means of service provided for in Title 9 or by delivery of a copy of the complaint and summons by certified mail or statutory overnight delivery to said owner or lienholder or a person of suitable age or discretion having charge of said owner's premises. For purposes of this subsection, where forfeiture of a motor vehicle titled or registered in Georgia is sought, notice to the titleholder shall be deemed adequate if a copy of the complaint and summons is mailed by certified mail or statutory overnight delivery to the titleholder at the address set out in the title and an additional copy is mailed by certified mail or statutory overnight delivery to the firm, person, or corporation which holds the current registration for said motor vehicle, who shall be deemed agent for service for said titleholder, and said complaint is advertised once a week for two weeks as set out in this subsection. If the owner, lessee, or person having a duly recorded security interest in or lien on the contraband motor vehicle is unknown or resides out of the state or departs the state or cannot after due

diligence be found within the state or conceals himself so as to avoid notice, notice of the proceedings shall be published once a week for two weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceeding and any sale of the motor vehicle resulting therefrom, but shall not constitute notice to any person having a duly recorded security interest in or lien upon such motor vehicle and required to be served under this Code section unless that person is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself to avoid notice.

(d)(1) Any party at interest may appear, by answer under oath, and file an intervention or defense within 30 days from the date of service on the condemnee of the action for condemnation. The owner, lessee, security interest holder, or lienholder shall be permitted to defend by showing that the motor vehicle seized was not subject to forfeiture under this Code section.

(2) A rented or leased vehicle shall not be subject to forfeiture unless it is established in the forfeiture proceedings that the owner of the rented or leased vehicle knew or should have known of or consented to the operation of such motor vehicle in a manner which would subject the vehicle to forfeiture. Upon learning of the address or phone number of the rental or leasing company which owns such vehicle, the district attorney shall immediately contact the company to inform it that the vehicle is available for the company to take possession.

(e) The court to which any such petition for condemnation may be referred may, in its discretion, allow any party at interest, after making said defense under subsection (d) of this Code section, to give bond and take possession of the motor vehicle seized. Such motor vehicle shall not be sold or leased without prior approval of the court. In the event the court approves such sale or lease, the proceeds arising therefrom shall be deposited in the registry of the court, pending final adjudication of the forfeiture proceeding. The court shall determine whether the bond shall be a forthcoming bond or an eventual condemnation money bond and shall also determine the amount of the bond. The enforcement of any bond so given shall be regulated by the general law applicable to such cases.

(f) If no defense or intervention is filed within 30 days from the date of service on the condemnee of the petition, judgment shall be entered by the court and the motor vehicle shall be sold. The court may direct that such property be sold by:

(1) Judicial sale as provided in Article 7 of Chapter 13 of Title 9; provided, however, that the court may establish a minimum acceptable price for such property; or

(2) Any commercially feasible means.

(g) The proceeds arising from such sale shall be deposited into the general treasury of the state or any other governmental unit whose law enforcement agency it was that originally seized the motor vehicle. It is the intent of the General Assembly that, where possible, proceeds deposited into the state treasury should be used and that proceeds vested in any local governmental unit shall be applied to fund alcohol or drug treatment, rehabilitation, and prevention and education programs, after making the necessary expenditures for:

(1) Any costs incurred in the seizure;

(2) The costs of the court and its officers; and

(3) Any cost incurred in the storage, advertisement, maintenance, or care of the motor vehicle.

(h) The interest of an owner, lessee, security interest holder, or lienholder shall not be subject to forfeiture unless the condemnor shows by a preponderance of evidence that such person knew or reasonably should have known that the operator was a habitual violator as set forth in subsection (a) of this Code section and knew or reasonably should have known that such person would operate or was operating the vehicle while in violation of Code Section 40-6-391.

(i) In any case where a vehicle which is the only family vehicle is determined to be subject to forfeiture, the court may, if it determines that the financial hardship to the family as a result of the forfeiture and sale outweighs the benefit to the state from such forfeiture, order the title to the vehicle transferred to such other family member who is a duly licensed operator and who requires the use of such vehicle for employment or family transportation purposes. Such transfer shall be subject to any valid liens and shall be granted only once. (Code 1981, § 40-6-391.2, enacted by Ga. L. 1991, p. 1896, § 1; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Surrender of license plates of habitual violators, § 40-2-136. Habitual violators, § 40-5-58.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “, provided that” was substituted for “. Provided

that” near the end of subsection (a), and “preponderance” was substituted for “preponderance” in subsection (h).

Law reviews. — For note on 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992).

JUDICIAL DECISIONS

Forfeiture of parent's vehicle for crime of child. — Forfeiture of appellant parent's vehicle after the parent's child, a habitual offender, was arrested for driving the vehicle without a license, driving un-

der the influence of alcohol, and leaving the scene of an accident was not clearly erroneous since: (1) the harshness of the penalty was considered, but forfeiture was expressly provided for by statute; (2) the

vehicle was the instrumentality used by the child to commit the offense which led to the forfeiture and, therefore, was close enough to the offense to render the vehicle "guilty"; and (3) while it was not apparent

how frequently the child drove the parent's car, it was clear that the child was driving the vehicle at the time of arrest. *Frank v. State*, 257 Ga. App. 164, 570 S.E.2d 613 (2002).

OPINIONS OF THE ATTORNEY GENERAL

"Director" in subsection (c) is surplusage. — Term "director" in O.C.G.A. § 40-6-391.2(c) is mere surplusage without significance in this context. 1992 Op. Att'y Gen. No. U92-8.

Cost of storage at commercial facility. — District attorney, as the state official responsible for initiating forfeiture

proceedings and to whom the vehicle is delivered, is responsible for storage costs if the vehicle is stored at a commercial vehicle storage facility, although proceeds from this and other forfeitures may be used for payment of these costs. 1992 Op. Att'y Gen. No. U92-8.

40-6-391.3. Penalty for conviction for driving under influence of alcohol or drugs while driving school bus.

A school bus driver licensed pursuant to Article 7 of Chapter 5 of this title shall upon a conviction of a violation of Code Section 40-6-391 while driving a school bus be punished by imprisonment for a period of not less than one year nor more than five years or by a fine of not less than \$1,000.00 nor more than \$5,000.00, or both. (Code 1981, § 40-6-391.3, enacted by Ga. L. 1991, p. 1140, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, this Code section, enacted as Code Section

40-6-391.2, was renumbered as Code Section 40-6-391.3.

40-6-392. Chemical tests for alcohol or drugs in blood.

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily substance shall be admissible. Where such a chemical test is made, the following provisions shall apply:

(1)(A) Chemical analysis of the person's blood, urine, breath, or other bodily substance, to be considered valid under this Code section, shall have been performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation on a machine which was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order and by an individual possessing a valid permit issued by the Division of Forensic Sciences for this purpose. The Division of Forensic Sci-

ences of the Georgia Bureau of Investigation shall approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, along with requirements for properly operating and maintaining any testing instruments, and to issue certificates certifying that instruments have met those requirements, which certificates and permits shall be subject to termination or revocation at the discretion of the Division of Forensic Sciences.

(B) In all cases where the arrest is made on or after January 1, 1995, and the state selects breath testing, two sequential breath samples shall be requested for the testing of alcohol concentration. For either or both of these sequential samples to be admissible in the state's or plaintiff's case-in-chief, the readings shall not differ from each other by an alcohol concentration of greater than 0.020 grams and the lower of the two results shall be determinative for accusation and indictment purposes and administrative license suspension purposes. No more than two sequential series of a total of two adequate breath samples each shall be requested by the state; provided, however, that after an initial test in which the instrument indicates an adequate breath sample was given for analysis, any subsequent refusal to give additional breath samples shall not be construed as a refusal for purposes of suspension of a driver's license under Code Sections 40-5-55 and 40-5-67.1. Notwithstanding the above, a refusal to give an adequate sample or samples on any subsequent breath, blood, urine, or other bodily substance test shall not affect the admissibility of the results of any prior samples. An adequate breath sample shall mean a breath sample sufficient to cause the breath-testing instrument to produce a printed alcohol concentration analysis.

(2) When a person shall undergo a chemical test at the request of a law enforcement officer, only a physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person may withdraw blood for the purpose of determining the alcoholic content therein, provided that this limitation shall not apply to the taking of breath or urine specimens. No physician, registered nurse, or other qualified person or employer thereof shall incur any civil or criminal liability as a result of the medically proper obtaining of such blood specimens when requested in writing by a law enforcement officer;

(3) The person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The justifiable failure or inability to obtain an additional test shall not

preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer; and

(4) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. The arresting officer at the time of arrest shall advise the person arrested of his rights to a chemical test or tests according to this Code section.

(b) Except as provided in subsection (c) of this Code section, upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, may give rise to inferences as follows:

(1) If there was at that time an alcohol concentration of 0.05 grams or less, the trier of fact in its discretion may infer therefrom that the person was not under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391; or

(2) If there was at that time an alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any inference that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391, but such fact may be considered by the trier of fact with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391.

(c)(1) In any civil or criminal action or proceeding arising out of acts alleged to have been committed in violation of paragraph (5) of subsection (a) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being in actual physical control ended an alcohol concentration of 0.08 or more grams in the person's blood, breath, or urine, the person shall be in violation of paragraph (5) of subsection (a) of Code Section 40-6-391.

(2) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (i) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being in actual physical control ended an alcohol concentration of 0.04 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (i) of Code Section 40-6-391.

(3) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (k) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being in actual physical control ended an alcohol concentration of 0.02 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (k) of Code Section 40-6-391.

(d) In any criminal trial, the refusal of the defendant to permit a chemical analysis to be made of his blood, breath, urine, or other bodily substance at the time of his arrest shall be admissible in evidence against him.

(e)(1) A certification by the office of the Secretary of State or by the Department of Public Health that a person who drew blood was a licensed or certified physician, physician assistant, registered nurse, practical nurse, medical technologist, medical laboratory technician, or phlebotomist at the time the blood was drawn;

(2) Testimony, under oath, of the blood drawer; or

(3) Testimony, under oath, of the blood drawer's supervisor or medical records custodian that the blood drawer was properly trained and authorized to draw blood as an employee of the medical facility or employer

shall be admissible into evidence for the purpose of establishing that such person was qualified to draw blood as required by this Code section.

(f) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

"This breath-testing instrument (serial no. _____) was thoroughly inspected, tested, and standardized by the undersigned on (date _____) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order."

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (a) of this Code section and subparagraph (g)(2)(F) of Code Section 40-5-67.1. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 47; Ga. L. 1968, p. 448, §§ 1, 2; Ga. L. 1974, p. 562, §§ 1, 2; Code 1933, § 68A-902.1, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1008, § 3; Ga. L. 1977, p. 1036, § 1; Ga. L. 1983, p. 1000, § 14; Ga. L. 1988, p. 1893, §§ 3, 5; Ga. L. 1990, p.

2048, § 5; Ga. L. 1991, p. 1886, § 10; Ga. L. 1992, p. 2564, § 13; Ga. L. 1994, p. 1600, § 10; Ga. L. 1995, p. 1160, § 4; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 760, § 25; Ga. L. 2001, p. 208, § 1-6; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2011, p. 705, § 6-3/HB 214.)

Cross references. — Obtaining of blood sample to test for presence of intoxicating substances in instances where person, as result of casualty or other ailment is unable to give consent to taking of sample, § 45-16-46. Administering tests to persons charged with navigating vessels while intoxicated, § 52-7-12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, paragraphs (c)(1), (c)(1), and (c)(2) were redesignated as paragraphs (c)(1), (c)(2), and (c)(3), respectively.

Editor's notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1995, p. 1160, § 5, not codified by the General Assembly, provides that the Act shall apply to all cases pending at the time of its approval by the Governor or its becoming law without such approval, except that the provisions regarding the requirement for two breath samples set forth in subparagraph (a)(1)(B) of Code Section 40-6-392 shall not apply to arrest made prior to January 1, 1995.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the

"Teen-age and Adult Driver Responsibility Act".

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews. — For article, "Challenges to Humanitarian Legal Approaches for Eliminating the Hazards of Drunk Alcoholic Drivers," see 4 Ga. L. Rev. 251 (1970). For article surveying judicial developments in Georgia criminal law, see 31 Mercer L. Rev. 59 (1979). For article surveying Georgia cases in the area of evidence from June 1979 through May 1980, see 32 Mercer L. Rev. 63 (1980). For article surveying developments in Georgia workers' compensation law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 323 (1981). For article surveying law of evidence in 1984-1985, see 37 Mercer L. Rev. 249 (1985). For annual survey of the law of evidence, see 38 Mercer L. Rev. 215 (1986). For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997). For annual survey article discussing developments in the law of evidence, see 51 Mercer L. Rev. 279 (1999). For article, "The Harper Standard and the Alcosensor: The Road Not Traveled," see 6 Ga. St. B.J. 8 (2000). For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003). For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005). For annual survey of evidence law, see 58 Mercer L. Rev. 151 (2006). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note discussing scientific basis of blood classification and use of blood tests as evidence, see 16 Mercer L. Rev. 306 (1964). For note on 1991 amendment of

this Code section, see 8 Ga. St. U.L. Rev. 129 (1992). For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992). For note, "The Final Patient Privacy Regulations Under the Health Insurance Portability and Accountability Act — Promoting Patient Privacy or Public Confusion?," see 37 Ga. L. Rev. 723

(2003). For note, "Rodriguez v. State: Addressing Georgia's Implied Consent Requirements for Non-English-Speaking Drivers," see 54 Mercer L. Rev. 1253 (2003).

For comment on *Flournoy v. State*, 106 Ga. App. 756, 128 S.E.2d 528 (1962), see 14 Mercer L. Rev. 442 (1963).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
CONSTITUTIONALITY
PERFORMANCE OF TESTS
ADMISSIBILITY OF RESULTS
JUDICIAL PROCEEDINGS

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations cited below referring to .12 percent alcohol blood level construe paragraph (b)(4) as it existed prior to the 1988 amendment.

Ga. L. 1968, p. 448 should be strictly construed. *Burson v. Collier*, 226 Ga. 427, 175 S.E.2d 660 (1970).

In cases of offenses committed prior to April 21, 1995, strict compliance with the notice requirement as to independent tests was not required and failure to fully advise the defendants of the defendants' rights to an independent test by qualified personnel did not render the warning legally insufficient. *State v. Holcomb*, 219 Ga. App. 231, 464 S.E.2d 651 (1995).

Adoption and publication. — Standard Operating Procedures for urinalysis testing of the Division of Forensic Sciences of the Georgia Bureau of Investigation satisfied the requirements regarding adoption and publication of rules under O.C.G.A. § 50-13-3. *State v. Cooper*, 229 Ga. App. 97, 493 S.E.2d 1 (1997).

Retroactive application of express certification requirement. — Provisions requiring certification of inspection of breath-testing instruments applied retroactively to cases pending on the date of enactment (April 21, 1995); thus, suppression of breath test results was proper since the state could not produce an in-

spection certificate. *State v. Kampplain*, 223 Ga. App. 16, 477 S.E.2d 143 (1996); *Cullen v. State*, 223 Ga. App. 356, 477 S.E.2d 620 (1996).

Breath testing device certificates provided for in O.C.G.A. § 40-6-392(f) are records made within the regular course of business. *Brown v. State*, 268 Ga. 76, 485 S.E.2d 486 (1997); *Rowell v. State*, 229 Ga. App. 397, 494 S.E.2d 5 (1997); *Jackson v. State*, 233 Ga. App. 568, 504 S.E.2d 505 (1998).

Gas chromatograph printout is not a scientific report. — Printout from a gas chromatograph is a graph or recordation of data and is not a scientific report; therefore, *Rayburn v. State*, 234 Ga. App. 482, 506 S.E.2d 876 (1998), along with other cases interpreting O.C.G.A. § 17-16-23, do not govern a discovery dispute regarding the printout. *Birdsall v. State*, 254 Ga. App. 555, 562 S.E.2d 841 (2002).

Maintenance logs not admitted. — Trial court did not err in refusing a DUI defendant's request to admit maintenance logs showing when the Intoxilyzer 5000 used to conduct the defendant's breath test was taken out of service. Intoxilyzer 5000 maintenance logs were not even relevant enough to be discoverable pursuant to O.C.G.A. § 40-6-392(a)(4). *Jacobson v. State*, 306 Ga. App. 815, 703 S.E.2d 376 (2010), cert. denied, No. S11C0498, 2011 Ga. LEXIS 582 (Ga. 2011).

Certificate is not written scientific report. — Certificate of inspection of

General Consideration (Cont'd)

breath testing instruments required to be made by O.C.G.A. § 40-6-392(f) is not a written scientific report within the meaning of O.C.G.A. § 17-16-23, relating to the right of defendants to reports. *Harmon v. State*, 224 Ga. App. 890, 482 S.E.2d 730 (1997).

Completed certificate admissible without further proof. — Once a certificate of inspection is completed as specified under O.C.G.A. § 40-6-392, the certificate is admissible in any court of law without further proof and a further foundation for admission under the business records exception to the hearsay rule is rendered unnecessary. *State v. Haddock*, 235 Ga. App. 726, 510 S.E.2d 561 (1998).

Implied consent valid provision. — O.C.G.A. § 40-5-67.1, upon becoming effective, did not repeal that portion of O.C.G.A. § 40-6-392 regarding implied consent. Code Section 40-5-67.1 primarily concerns the methods and procedures to effect the administrative suspension of a driver's license based upon the use of chemical test results and does not address the admissibility of evidence in a criminal trial and was intended to provide additional consent notice requirements. *State v. Hassett*, 216 Ga. App. 114, 453 S.E.2d 508 (1995).

Implied consent notice given before arrest. — When the defendant received an implied consent notice and blood test before the defendant's arrest for driving under the influence, the notice was not untimely under O.C.G.A. § 40-6-392 because that Code section does not apply to situations where the notice and test precede an arrest. *Joiner v. State*, 239 Ga. App. 843, 522 S.E.2d 25 (1999).

Evidence of implied consent warning being provided. — Although a videotape of a defendant's traffic stop did not show the officer reading the defendant the implied consent notice, the videotape's sound was poor and there were moments when both the officer and the defendant were off-camera. The officer was further heard telling the defendant that what happened would depend on the results of the test, implying that the officer had read the notice. Additionally, the officer testi-

fied at trial without objection that the officer had read the notice and that the defendant had consented. *Rowell v. State*, 312 Ga. App. 559, 718 S.E.2d 890 (2011).

Arrest not required before reading of implied consent rights when defendant received serious injuries in accident. — Because the defendant was involved in an accident which resulted in serious injuries and the investigating officer had probable cause to believe that the defendant was driving under the influence, the officer was not required to arrest the defendant before the reading of implied consent; however, if a different accident did not involve serious injuries, the suspect needed to be under arrest before the implied consent rights were read to the suspect. *Hough v. State*, 279 Ga. 711, 620 S.E.2d 380 (2005).

Time of notification relative to arrest. — Trial court erred in concluding that the state's breath tests relating to a charge of DUI against the defendant were not admissible and had to be suppressed on the ground that a police officer did not read the defendant's implied consent rights at the scene of the defendant's arrest in a local park; the defendant was not arrested in the local park for DUI, but instead was arrested for criminal trespass, and it was not until the defendant was taken to a detention center that the defendant was arrested for DUI at which time the officer read the implied consent rights to the defendant. *State v. Jones*, 261 Ga. App. 357, 583 S.E.2d 139 (2003).

Notification of implied consent rights given in close proximity to arrest. — Under ordinary circumstances, the advice should be given at the time of the arrest or at a time as close in proximity to the instant of arrest as circumstances might warrant. *Lee v. State*, 177 Ga. App. 8, 338 S.E.2d 445 (1985), cert. denied, 476 U.S. 1116, 106 S. Ct. 1973, 90 L. Ed. 2d 657 (1986).

When a defendant was being treated for an injury and was awaiting a trip to the hospital; when the officer was concerned about the defendant's condition because the defendant was dazed and nauseated; and when the officer delayed charging the defendant until just before the ambulance was leaving, the officer was justified in

advising the defendant after defendant's arrival at the hospital. The warning was given in close proximity to the arrest under the circumstances, and hence, evidence of the defendant's refusal to submit to testing was admissible. *Lee v. State*, 177 Ga. App. 8, 338 S.E.2d 445 (1985), cert. denied, 476 U.S. 1116, 106 S. Ct. 1973, 90 L. Ed. 2d 657 (1986).

Notification of one's implied consent rights is timely if given at a time as close in proximity to the instant of arrest as the circumstances of the individual case might warrant. *Mason v. State*, 177 Ga. App. 184, 338 S.E.2d 706 (1985).

Defendant, who was arrested at 1:28 p.m. and informed of defendant's rights at 1:46 p.m. on the same day, was informed of defendant's implied consent rights at a time enabling the defendant to exercise those rights in a meaningful fashion and the defendant's refusal to submit to chemical analysis was properly admitted in evidence. *Highsmith v. City of Woodbury*, 189 Ga. App. 58, 375 S.E.2d 79, cert. denied, 189 Ga. App. 912, 375 S.E.2d 79 (1988).

Arresting officer's failure to read implied consent rights to the defendant until 25 to 30 minutes after defendant first became aware of the defendant's condition was not improper since the rights were read after the defendant was taken to the police station and there arrested for driving under the influence. *State v. Whitfield*, 214 Ga. App. 574, 448 S.E.2d 492 (1994).

Delay in reading implied consent rights for five to ten minutes was not excessive when the defendant was not coherent at the scene of defendant's physical arrest. *State v. Holmes*, 224 Ga. App. 29, 479 S.E.2d 409 (1996).

Two-hour delay before the defendant was advised of the defendant's implied consent rights was not untimely since the delay was caused by a newly hired officer's call for assistance to confirm the officer's determination that the defendant was driving under the influence. *Edge v. State*, 226 Ga. App. 559, 487 S.E.2d 117 (1997).

When there was a perceived threat of a fire or explosion at the accident scene and an apparent need for prompt medical transportation of the defendant for medical treatment, there was a fair risk that

the defendant would not have been able to make an intelligent choice concerning the state's request for a blood test and the implied consent warning given at the hospital was timely given. *Townsend v. State*, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Implied consent warning must be given at a time as close in proximity to the instant of arrest as the circumstances of that particular case might warrant. *Townsend v. State*, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Although a police officer who detected a strong order of alcohol coming from the defendant who was standing over a motorcycle that was involved in an accident informed the defendant of the defendant's rights under Georgia's implied consent statute before the officer arrested the defendant for driving under the influence of alcohol, the appellate court found that the defendant was not free to leave at the time the implied consent warning was read to the defendant, and the court held that the reading of the notice satisfied the requirements of O.C.G.A. §§ 40-5-55, 40-5-67.1(a), and 40-6-392(a)(4). *Oliver v. State*, 268 Ga. App. 290, 601 S.E.2d 774 (2004).

O.C.G.A. § 40-5-67.1 implied consent notice given at the "time of arrest" under O.C.G.A. § 40-6-392 was timely when it preceded the formal arrest by a few seconds and the O.C.G.A. § 40-5-55(a) state-administered chemical testing, "Intoxilyzer 5000" testing, was done after the arrest. The "time of the arrest" included times as close in proximity to the instant of arrest as the circumstances of the individual case might warrant. *Kahl v. State*, 268 Ga. App. 879, 602 S.E.2d 888 (2004).

With regard to a defendant's conviction for driving under the influence and other related crimes, the trial court properly denied the defendant's motion to suppress field sobriety test results which the defendant based on being unreasonably detained without receiving the Miranda warnings as the defendant was not under arrest and the defendant's detainment while waiting for a second officer to arrive at the scene was not unreasonable nor unnecessary since the first officer who initiated the stop after observing the de-

General Consideration (Cont'd)

fendant driving erratically had a suspect in the patrol car. The court also found that the second officer timely gave the defendant the implied consent warnings after the defendant was arrested and had refused to submit to the breath test. *Thomas v. State*, 294 Ga. App. 108, 668 S.E.2d 540 (2008).

No notice when driver "out of it." — Officer's reliance on a nurse's statement that an injured driver was "out of it" was reasonable after the officer observed medical personnel working around the driver, combined with the officer's first impression that the driver was dead, thus authorizing the officer's failure to obtain consent for a chemical analysis of bodily fluids and to advise of implied consent rights. *Hill v. State*, 208 Ga. App. 714, 431 S.E.2d 471 (1993).

Hearing impaired person arrested for driving under the influence was not entitled to a qualified interpreter before that person's rights under the implied consent law were conveyed to the person by the arresting officer. *State v. Webb*, 212 Ga. App. 872, 443 S.E.2d 630 (1994).

Blood test results inadmissible When the arresting officer failed to comply with the procedure in O.C.G.A. § 40-6-392, such failure rendered blood test results inadmissible. *State v. Woody*, 215 Ga. App. 448, 449 S.E.2d 615 (1994).

Blood test results admissible. — After a defendant's van hit a utility pole, an officer did not violate O.C.G.A. § 40-6-392(a)(3) by failing to reasonably accommodate the defendant's request for a breath test as the officer believed that the defendant could not complete a breath test due to serious injuries to the defendant's mouth and jaw. Since the defendant was not in police custody, but was a hospital patient, and consented to a blood test after first requesting a breath test, evidence of the blood test was admissible in a prosecution for driving under the influence. *Fowler v. State*, 294 Ga. App. 864, 670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

Impact of voluntary consent to test. — Pursuant to O.C.G.A. § 40-5-67.1(d.1),

a trial court did not err in denying the defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant voluntarily consented to the breath test. *Jones v. State*, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

Miranda warning unnecessary. — Evidence of the defendant's refusal to take a breath test did not need to be excluded simply because the officer did not advise defendant of the defendant's rights. *Lankford v. State*, 204 Ga. App. 405, 419 S.E.2d 498 (1992), cert. denied, 506 U.S. 1051, 113 S. Ct. 972, 122 L. Ed. 2d 127 (1993).

Choice afforded a suspect under O.C.G.A. §§ 40-5-55 and 40-6-392, either to agree or refuse to take a blood-alcohol test, is not protected by the privilege against self-incrimination, and the form signed by the defendant, agreeing to take a breath test, was likewise unprotected, such that the court erred in suppressing the form based on a police officer's failure to inform the defendant of the defendant's Miranda rights. *State v. Mack*, 207 Ga. App. 287, 427 S.E.2d 615 (1993).

An arresting officer was not required to read a defendant a Miranda warning during a traffic stop based on the officer's statement to the defendant that if the defendant did not blow into an alco-sensor properly, the officer would take the defendant to jail, because the defendant voluntarily consented to take the test and made several attempts before the officer made the statement. *Rowell v. State*, 312 Ga. App. 559, 718 S.E.2d 890 (2011).

Results admissible although not given to defendant immediately. — Trial court erred in suppressing the results of an alcohol test on the grounds that the results were not given to the defendant immediately after the test. There was no requirement in the procedural rules enacted pursuant to O.C.G.A. § 40-6-392(a)(1)(A) by the Division of Forensic Sciences that the results be given to defendant at any particular time. *State v. Padidham*, 310 Ga. App. 839, 714 S.E.2d 657 (2011).

Testimony as to officer's precise wording not required. — Trial court did

not err in admitting into evidence the results of an intoximeter test performed on the defendant when the arresting officer could not recall the precise wording in which the officer gave the defendant the implied consent warnings. *Cheevers v. Clark*, 214 Ga. App. 866, 449 S.E.2d 528 (1994).

Refusal to take state-administered test. — Driver has the right to refuse to take a state-administered test subject to the legislative mandate that evidence of the exercise of that right shall be admissible in the driver's criminal trial. *Nawrocki v. State*, 235 Ga. App. 416, 510 S.E.2d 301 (1998).

Refusal to undergo alcohol screening test. — O.C.G.A. § 40-6-392 did not apply to the initial alcohol screening test used to determine probable cause to arrest drunk drivers and, thus, a police officer was not required to advise the defendant in a prosecution for driving under the influence of the defendant's right to an independent test before requesting that the defendant undergo preliminary screening; evidence regarding the defendant's pre-arrest refusal to undergo the alcohol screening test was admissible. *Keenan v. State*, 263 Ga. 569, 436 S.E.2d 475 (1993); *Bravo v. State*, 249 Ga. App. 433, 548 S.E.2d 129 (2001).

Refusal to submit to blood or urine test. — Refusal to submit to a blood or urine test may be considered as positive evidence creating an inference that the test would show the presence of a prohibited substance. *Albert v. State*, 236 Ga. App. 146, 511 S.E.2d 244 (1999).

Notification by officer other than arresting officer. — Fact that a police officer other than the arresting officer advised the defendant of the defendant's rights did not form a basis for excluding the results of the defendant's intoximeter tests. *State v. Buice*, 176 Ga. App. 843, 338 S.E.2d 293 (1985).

Implied consent statute was not violated because an officer other than the arresting officer read the defendant the implied consent rights. *Edge v. State*, 226 Ga. App. 559, 487 S.E.2d 117 (1997).

Misleading arrestee. — Evidence merely that the officer informed the arrestee that the consequences of the

arrestee's refusal to submit to a state-administered test could be suspension of the arrestee's driver's license for a period of "six to twelve months" in no way suggests that the officer purposely attempted to mislead the arrestee and the results of the defendant's blood-alcohol test were properly admitted into evidence. *Whittington v. State*, 184 Ga. App. 282, 361 S.E.2d 211 (1987).

Agitated relatives of victim justified delay in advising of rights. — When a two-year-old child was killed in the accident and the officer was concerned that agitated relatives of the child gathered at the scene might be a threat to the defendant, it could not be said that the officer's waiting until the officer was driving away after having placed the defendant under arrest to advise the defendant of the defendant's rights was not timely. *Hall v. State*, 219 Ga. App. 871, 467 S.E.2d 206 (1996).

Repetition of warnings not required. — Implied consent statute was properly implemented when the defendant was given the implied consent warnings when the defendant was arrested for driving with a suspended license but was not again given the implied consent warnings after the defendant took a breath test and was placed under arrest for driving under the influence. *Parsons v. State*, 190 Ga. App. 803, 380 S.E.2d 87 (1989).

Police officer was not required to again allow the defendant to consider the defendant's options once the defendant knew the defendant had failed an administered breath test by returning to the defendant the form which the defendant had previously reviewed, initialled, and signed so as to indicate the defendant's desire for an additional test. *State v. Hull*, 210 Ga. App. 72, 435 S.E.2d 284 (1993).

Pretense of compliance as tantamount to refusal to take test. — When a defendant gives only the pretense of compliance with a blood-alcohol test, the defendant's actions are tantamount to a refusal to take the test, and the officer who attempted to give the test can testify regarding the defendant's refusal to take the test. *Cadden v. State*, 176 Ga. App. 377, 336 S.E.2d 266 (1985).

Test not performed at request of officer. — Results of an alcohol concentra-

General Consideration (Cont'd)

tion level test which was not performed at either the request or direction of a law enforcement officer are not subject to the dictates of O.C.G.A. § 40-6-392 and the party seeking to admit the test results must satisfy the court that the results are admissible pursuant to the rules of evidence. *Oldham v. State*, 205 Ga. App. 268, 422 S.E.2d 38, cert. denied, 205 Ga. App. 901, 422 S.E.2d 38 (1992).

Defendant not in custody before implied consent warning given. — Defendant was not in custody before an implied consent warning was given; the defendant knew that the defendant was being investigated for driving under the influence and had been told that the defendant was drunk, but the defendant had not been placed in a patrol car or handcuffed. *Tune v. State*, 286 Ga. App. 32, 648 S.E.2d 423 (2007).

Prosecution for allowing intoxicated driver to operate vehicle. — If the state wants to prosecute a party who allowed an intoxicated driver to operate an automobile in violation of the section governing driving under the influence, the state can use the intoximeter results obtained from the accused operator only if the state can prove that the state's evidence meets the statutory requirements for admissibility of O.C.G.A. § 40-6-392. *Munda v. State*, 172 Ga. App. 857, 324 S.E.2d 799 (1984).

Person charged with permitting another person to operate an automobile contrary to the law governing driving under the influence has standing to contest the admissibility of an intoximeter test under the section governing the introduction of such evidence. *Munda v. State*, 172 Ga. App. 857, 324 S.E.2d 799 (1984).

"Totality of circumstances" test inapplicable. — Because the choice afforded a suspect under the implied consent statute does not rise to the level of constitutional self-incrimination, it is improper for a court to apply the "totality of circumstances" test. The issues to be determined are simply whether the officer told the suspect of the defendant's implied consent rights in a timely fashion and whether the suspect revoked the implied

consent. *State v. Highsmith*, 190 Ga. App. 838, 380 S.E.2d 272, cert. denied, 190 Ga. App. 899, 380 S.E.2d 272 (1989).

Error in admitting chemical test results harmless in light of other evidence. — While the appeals court agreed that the trial court erred in denying the defendant's motion to suppress the results of the chemical test of the defendant's blood, the error was harmless as other evidence presented by the state, specifically the defendant's admission to being intoxicated and the testimony of other witnesses describing their observations, proved the defendant's intoxication. *Harrelson v. State*, 287 Ga. App. 664, 653 S.E.2d 98 (2007).

Failure to show harm after court entered directed verdict of acquittal. — Defendant was unable to show harm from the denial of a pretrial motion to dismiss evidence of a breath test administered before the defendant was read the implied consent rights as required by O.C.G.A. § 40-5-67.1(b)(2), and without being informed of the right to an independent chemical analysis as required by O.C.G.A. § 40-6-392(a)(4) because at trial, the trial court directed a verdict of acquittal on the charge of driving under the influence with a blood alcohol level higher than 0.08 percent. *Hernandez v. State*, 297 Ga. App. 177, 676 S.E.2d 795 (2009).

Subjective "less safe" test determines whether one is "under the influence" of intoxicating liquors. *Harper v. State*, 91 Ga. App. 456, 86 S.E.2d 7 (1955).

Subpoena not required to obtain gas chromatograph results. — It is reversible error for a trial court to quash a subpoena seeking the printout from a gas chromatograph; a subpoena is not required to obtain a printout from a gas chromatograph and a request for discovery directed to the state is adequate to prompt production of the printout, whether it is in the hands of the prosecutor or in the files of the state crime laboratory. *Birdsall v. State*, 254 Ga. App. 555, 562 S.E.2d 841 (2002).

Only computer printout of intoxilyzer test is discoverable. — Trial court did not err in denying the defendant's motion for disclosure of scien-

tific reports pursuant to O.C.G.A. § 40-6-392(a)(4) because intoxilyzer test results were provided to the defendant, and the defendant's discovery request was overbroad when the defendant sought information far beyond the scope of information to which the defendant was entitled under § 40-6-392(a)(4); the only discoverable information from an intoxilyzer test under § 40-6-392(a)(4) is the computer printout of the test result because unlike the gas chromatography test, which produces data that has to be interpreted by a chemist to determine blood alcohol level, an intoxilyzer does not produce raw data but rather prints out the actual test result showing the person's blood alcohol level, which means that the machine computes the test result. *Stetz v. State*, 301 Ga. App. 458, 687 S.E.2d 839 (2009).

Cited in *Yawn v. State*, 134 Ga. App. 77, 213 S.E.2d 178 (1975); *Campbell v. State*, 136 Ga. App. 338, 221 S.E.2d 212 (1975); *Ware v. State*, 137 Ga. App. 673, 224 S.E.2d 873 (1976); *Abercrombie v. State*, 138 Ga. App. 536, 226 S.E.2d 763 (1976); *Martin v. State*, 139 Ga. App. 8, 228 S.E.2d 15 (1976); *Morris v. State*, 139 Ga. App. 630, 229 S.E.2d 110 (1976); *Johnson v. City of Albany*, 413 F. Supp. 782 (M.D. Ga. 1976); *Hunter v. State*, 141 Ga. App. 276, 233 S.E.2d 252 (1977); *Loar v. State*, 142 Ga. App. 875, 237 S.E.2d 237 (1977); *Hunter v. State*, 143 Ga. App. 541, 239 S.E.2d 212 (1977); *State v. Baker*, 146 Ga. App. 608, 247 S.E.2d 160 (1978); *McElwee v. State*, 147 Ga. App. 84, 248 S.E.2d 162 (1978); *Longino v. Cofer*, 148 Ga. App. 341, 251 S.E.2d 113 (1978); *Chase v. State*, 148 Ga. App. 690, 252 S.E.2d 194 (1979); *State v. Laycock*, 151 Ga. App. 145, 259 S.E.2d 150 (1979); *Ensley v. Jordan*, 244 Ga. 435, 260 S.E.2d 480 (1979); *Hardison v. Chastain*, 151 Ga. App. 678, 261 S.E.2d 425 (1979); *Jackson v. State*, 152 Ga. App. 441, 263 S.E.2d 181 (1979); *Terry v. Liberty Mut. Ins. Co.*, 152 Ga. App. 583, 263 S.E.2d 475 (1979); *Holloway v. McElroy*, 474 F. Supp. 1363 (M.D. Ga. 1979); *Adams v. Hardison*, 153 Ga. App. 152, 264 S.E.2d 693 (1980); *Collins v. State*, 154 Ga. App. 651, 269 S.E.2d 509 (1980); *Mulling v. State*, 156 Ga. App. 404, 274 S.E.2d 770 (1980); *Tolbert v. Hicks*, 158 Ga. App. 642, 281 S.E.2d 368 (1981); *Hartley v. State*,

159 Ga. App. 157, 282 S.E.2d 684 (1981); *Felchlin v. State*, 159 Ga. App. 120, 282 S.E.2d 743 (1981); *Garner v. State*, 159 Ga. App. 244, 282 S.E.2d 909 (1981); *Chumley v. State*, 160 Ga. App. 619, 287 S.E.2d 630 (1981); *Tucker v. State*, 249 Ga. 323, 290 S.E.2d 97 (1982); *Beaman v. State*, 161 Ga. App. 129, 291 S.E.2d 244 (1982); *State v. Johnston*, 249 Ga. 413, 291 S.E.2d 543 (1982); *Bailey v. State*, 249 Ga. 535, 291 S.E.2d 704 (1982); *Hardison v. Haslam*, 250 Ga. 59, 295 S.E.2d 830 (1982); *Smith v. State*, 164 Ga. App. 624, 298 S.E.2d 587 (1982); *State v. Chumley*, 164 Ga. App. 828, 299 S.E.2d 564 (1982); *Reliance Ins. Co. v. Bridges*, 168 Ga. App. 874, 311 S.E.2d 193 (1983); *Epps v. State*, 169 Ga. App. 157, 312 S.E.2d 146 (1983); *Higginbotham v. State*, 170 Ga. App. 80, 316 S.E.2d 181 (1984); *Parker v. State*, 170 Ga. App. 655, 317 S.E.2d 891 (1984); *Patton v. State*, 170 Ga. App. 807, 318 S.E.2d 231 (1984); *Quaile v. State*, 172 Ga. App. 421, 323 S.E.2d 281 (1984); *State v. Strickman*, 173 Ga. App. 1, 325 S.E.2d 775 (1984); *Horah v. State*, 173 Ga. App. 306, 325 S.E.2d 917 (1985); *Roberts v. State*, 173 Ga. App. 614, 327 S.E.2d 743 (1985); *Rielli v. State*, 174 Ga. App. 220, 330 S.E.2d 104 (1985); *Mitchell v. State*, 174 Ga. App. 594, 330 S.E.2d 798 (1985); *Riley v. State*, 174 Ga. App. 607, 330 S.E.2d 808 (1985); *Atkins v. State*, 175 Ga. App. 470, 333 S.E.2d 441 (1985); *Manning v. State*, 175 Ga. App. 738, 334 S.E.2d 338 (1985); *Drayton v. State*, 175 Ga. App. 803, 334 S.E.2d 720 (1985); *Cadden v. State*, 176 Ga. App. 377, 336 S.E.2d 266 (1985); *Paul v. State*, 176 Ga. App. 524, 336 S.E.2d 379 (1985); *State v. Carter*, 176 Ga. App. 872, 338 S.E.2d 300 (1985); *Little v. State*, 178 Ga. App. 268, 342 S.E.2d 712 (1986); *State v. Brown*, 178 Ga. App. 307, 342 S.E.2d 779 (1986); *Hogan v. State*, 178 Ga. App. 534, 343 S.E.2d 770 (1986); *Campbell v. State*, 178 Ga. App. 814, 344 S.E.2d 745 (1986); *State v. Greene*, 178 Ga. App. 875, 344 S.E.2d 771 (1986); *Smith v. State*, 180 Ga. App. 309, 349 S.E.2d 4 (1986); *Farmer v. State*, 180 Ga. App. 720, 350 S.E.2d 583 (1986); *Duffee v. State*, 184 Ga. App. 247, 361 S.E.2d 239 (1987); *Williams v. Hart*, 83 Bankr. 840 (Bankr. M.D. Ga. 1987); *Odom v. State*, 185 Ga. App. 496, 364 S.E.2d 626 (1988); *Smith v. State*, 185 Ga.

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App. 531, 364 S.E.2d 907 (1988); Clough v. Lively, 186 Ga. App. 415, 367 S.E.2d 295 (1988); Collum v. State, 186 Ga. App. 822, 368 S.E.2d 578 (1988); Brooks v. State, 187 Ga. App. 194, 369 S.E.2d 801 (1988); Buffington v. State, 190 Ga. App. 365, 378 S.E.2d 884 (1989); Watkins v. State, 191 Ga. App. 87, 381 S.E.2d 45 (1989); Potts v. State, 191 Ga. App. 75, 381 S.E.2d 99 (1989); Holcomb v. State, 191 Ga. App. 379, 381 S.E.2d 594 (1989); Hunter v. State, 191 Ga. App. 769, 382 S.E.2d 679 (1989); Koulianos v. State, 192 Ga. App. 90, 383 S.E.2d 642 (1989); Ross v. State, 192 Ga. App. 850, 386 S.E.2d 721 (1989); Ussery v. State, 195 Ga. App. 394, 393 S.E.2d 522 (1990); Shults v. State, 195 Ga. App. 525, 394 S.E.2d 573 (1990); Abdsharafat v. State, 195 Ga. App. 837, 395 S.E.2d 61 (1990); Menendez v. Jewett, 196 Ga. App. 565, 396 S.E.2d 294 (1990); Parker v. State, 198 Ga. App. 838, 403 S.E.2d 897 (1991); Fowler v. State, 200 Ga. App. 505, 408 S.E.2d 449 (1991); Hurd v. State, 201 Ga. App. 373, 411 S.E.2d 111 (1991); Daras v. State, 201 Ga. App. 512, 411 S.E.2d 367 (1991); Bowden v. State, 202 Ga. App. 802, 415 S.E.2d 527 (1992); Holloman v. State, 203 Ga. App. 476, 416 S.E.2d 839 (1992); Pippins v. State, 204 Ga. App. 318, 419 S.E.2d 28 (1992); Tibbs v. State, 207 Ga. App. 273, 427 S.E.2d 603 (1993); Clapsaddle v. State, 208 Ga. App. 840, 432 S.E.2d 262 (1993); Wells v. State, 210 Ga. App. 165, 435 S.E.2d 523 (1993); Gregg v. State, 216 Ga. App. 135, 453 S.E.2d 499 (1995); Walton v. State, 217 Ga. App. 11, 456 S.E.2d 289 (1995); Shelter Mut. Ins. Co. v. Bryant, 220 Ga. App. 526, 469 S.E.2d 792 (1996); Renschen v. State, 225 Ga. App. 678, 484 S.E.2d 753 (1997); Fruhling v. State, 233 Ga. App. 544, 505 S.E.2d 47 (1998); Buchnowski v. State, 233 Ga. App. 766, 505 S.E.2d 263 (1998); Lambropoulos v. State, 234 Ga. App. 625, 507 S.E.2d 225 (1998); State v. Kaylor, 234 Ga. App. 495, 507 S.E.2d 233 (1998); Mackey v. State, 234 Ga. App. 554, 507 S.E.2d 482 (1998); Walker v. State, 239 Ga. App. 831, 521 S.E.2d 861 (1999); Gallimore v. State, 242 Ga. App. 374, 529 S.E.2d 668 (2000); Klink v. State, 272 Ga. 605, 533 S.E.2d 92 (2000); Hulsey v.

Northside Equities, Inc., 249 Ga. App. 474, 548 S.E.2d 41 (2001); State v. Lentsch, 252 Ga. App. 655, 556 S.E.2d 248 (2001); Satterfield v. State, 252 Ga. App. 525, 556 S.E.2d 568 (2001); Johnson v. State, 261 Ga. App. 633, 583 S.E.2d 489 (2003); Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379 (2006); Stadnisky v. State, 285 Ga. App. 33, 645 S.E.2d 545 (2007); Dodds v. State, 288 Ga. App. 231, 653 S.E.2d 828 (2007).

Constitutionality

Constitutionality. — See Garrett v. Department of Pub. Safety, 237 Ga. 413, 228 S.E.2d 812 (1976).

Supreme Court's refusal to review a constitutional challenge to O.C.G.A. § 40-6-392 for mandating a presumption of intoxication if the alcoholic test reading is above .10 rendered such a contention without merit. McCann v. State, 167 Ga. App. 368, 306 S.E.2d 681 (1983), cert. denied, 464 U.S. 1044, 104 S. Ct. 712, 79 L. Ed. 2d 174 (1984).

Implied consent read in English to foreign speaking individual. — Defendant, a Spanish speaking person, who claimed constitutional violations to the implied consent statutes were without merit since the defendant was not similarly situated to a hearing impaired person and, although similarly situated to an English speaking person, there was a rational basis for requiring the implied consent warnings to be read in English. Rodriguez v. State, 275 Ga. 283, 565 S.E.2d 458 (2002).

Section grants right to refuse test. — Since, under the Constitution of Georgia, the state may constitutionally take a blood sample from a defendant without defendant's consent, O.C.G.A. §§ 40-5-55 (see O.C.G.A. § 40-5-67.1) and 40-6-392 grant, rather than deny, a right to a defendant by providing for refusal to take such a test. Allen v. State, 254 Ga. 433, 330 S.E.2d 588 (1985).

Choice provided to a DUI defendant under Georgia law—submitting to a blood-alcohol test or refusing to submit, with resultant sanctions—is not so painful, dangerous, or severe, or so violative of religious beliefs, that no choice actually exists, and does not amount to compulsion

on behalf of the state or a violation of due process. *Allen v. State*, 254 Ga. 433, 330 S.E.2d 588 (1985).

Multiple tests may be requested. — Nothing in the implied consent law prohibits an officer from advising a driver of the defendant's implied consent rights and requesting multiple chemical tests at one time, and such a request would not violate the Fourth Amendment as an unreasonable attempt to "shop" through the defendant's bodily fluids in search of evidence. *McKeown v. State*, 187 Ga. App. 685, 371 S.E.2d 243 (1988).

Procedural due process rights provided. — Under Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392), procedural due process rights are afforded a driver before the driver is deprived of any rights or privileges. *Cogdill v. Department of Pub. Safety*, 135 Ga. App. 339, 217 S.E.2d 502 (1975).

Trial court properly denied the defendant's amended motion for a new trial, holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I given that: (1) the claim was raised for the first time within the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when it promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. *Palmaka v. State*, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

State's failure to immediately inform a defendant of the results of the state-administered test does not create a situation where the defendant is left with no, or so little, information that he or she is denied any meaningful choice in violation of due process; driving under the influence defendants must determine, often under difficult and stressful circumstances, whether to request an independent test, and that the choice may be difficult does not render it fundamentally

unfair and this fact alone does not support a due process claim. *Padidham v. State*, 291 Ga. 99, 728 S.E.2d 175 (2012).

Constitutionality of statute's presumptions. — Presumptions created by statute do not constitute denial of due process and equal protection by being burden shifting when these "presumptions" are modified in the charge to the jury as, in reality, being only "rebuttable presumptions or inferences." *Olsen v. State*, 168 Ga. App. 296, 308 S.E.2d 703 (1983).

Confrontation rights not offended. — Charge on driving under the influence of alcohol does not impermissibly direct the return of a verdict of guilty on the basis of the statutory presumptions of intoxication when the jury is instructed that the statutory presumptions are rebuttable. *Clark v. State*, 169 Ga. App. 535, 313 S.E.2d 748 (1984).

Presumptions created by O.C.G.A. § 40-6-392 do not constitute a denial of due process of law. *Melton v. State*, 175 Ga. App. 472, 333 S.E.2d 682 (1985).

Former paragraph (b)(4) O.C.G.A. § 40-6-392 regarding the effect of a finding of a blood alcohol reading of .12 or more does not create a constitutionally impermissible presumption of guilt. *Turrentine v. State*, 176 Ga. App. 145, 335 S.E.2d 630 (1985).

Former paragraph (b)(3) O.C.G.A. § 40-6-392 does not create an unconstitutional, burden-shifting presumption that a person with 0.10 grams of alcohol per liter of blood is "under the influence" of alcohol. *Lattarulo v. State*, 261 Ga. 124, 401 S.E.2d 516 (1991), cert. denied, 502 U.S. 823, 112 S. Ct. 86, 116 L. Ed. 2d 59 (1991).

O.C.G.A. § 40-6-392 does not offend a defendant's right of confrontation because the admissibility of inspection certificates on breath testing devices, as provided by subsection (f), is based on the hearsay exception for business records. *Brown v. State*, 268 Ga. 76, 485 S.E.2d 486 (1997); *Rowell v. State*, 229 Ga. App. 397, 494 S.E.2d 5 (1997); *Jackson v. State*, 233 Ga. App. 568, 504 S.E.2d 505 (1998).

Because the classification of persons qualified to draw blood and the records showing such classification are regulated under Department of Human Resources

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rules, subsection (e) O.C.G.A. § 40-6-392 creates a public records exception to the hearsay rule, and therefore the certification required by that statute does not violate the confrontation clause. *Price v. State*, 269 Ga. 222, 498 S.E.2d 262 (1998).

Certificate of inspection for approved breath testing instrument that was properly prepared and executed was self authenticating, notwithstanding any other provision of law, was admissible, and did not deny the defendant the constitutional right to confront witnesses against the defendant. *Madden v. State*, 252 Ga. App. 164, 555 S.E.2d 832 (2001).

Admission of self-authenticating certificates of inspection for the Intoxilyzer 5000 used to test the defendant's breath was proper as the certificates were required by O.C.G.A. § 40-6-392(f), the certificates qualified as business records under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803), and the certificates did not violate the defendant's confrontation rights under U.S. Const., amend. 6. *Neal v. State*, 281 Ga. App. 261, 635 S.E.2d 864 (2006).

Self-incrimination. — Because the defendant was not compelled by the state to submit to a breath test after the defendant's arrest, the admission at trial of the test results did not violate the defendant's right against self-incrimination. *Fantasia v. State*, 268 Ga. 512, 491 S.E.2d 318 (1997).

Treating alcohol differently from other drugs. — Legislature is authorized to classify and treat alcohol differently from other drugs and the defendant cannot complain if drug users are not entitled to have qualified persons conduct the tests. *Head v. State*, 246 Ga. 360, 271 S.E.2d 452 (1980).

Duties of alcoholic beverage distributors. — Argument that former Code 1933, Ch. 68A violated due process by failing to require distributors of alcoholic beverages to label their products so as to put a consumer on notice as to what quantity of the beverage was required in a given time period to raise the level of alcohol to that prohibited by law was without merit. *Head v. State*, 246 Ga. 360,

271 S.E.2d 452 (1980) (see O.C.G.A. Ch. 6, T. 40).

Preservation of breath sample. — Neither the federal nor the state constitutional guarantee of due process requires the state to preserve a sample of the breath used in the administration of the auto-intoximeter test. *Hopper v. State*, 175 Ga. App. 358, 333 S.E.2d 201 (1985).

Standing. — Defendant, who was denied a second chemical test on the ground that the defendant did not have on the defendant's person sufficient currency with which to pay the \$38 cost of the test, lacked standing to attack the state's implied consent law as unconstitutional in denying an indigent person a second chemical test at public expense, absent any proof of the defendant's own indigency. *Taylor v. State*, 261 Ga. 415, 405 S.E.2d 496 (1991); *Stone v. State*, 262 Ga. 687, 424 S.E.2d 787 (1993).

Performance of Tests

Application of 1995 amendment. — Requirement imposed under the 1995 amendment of O.C.G.A. § 40-6-392 that for a test to be considered valid the test must be conducted "on a machine which was operated with ... components ... attached and in good working order" applied to a pending prosecution, and when the test was given on a machine on which a component prescribed by the manufacturer had been disabled and overridden, the test was not valid. *State v. Hunter*, 221 Ga. App. 837, 473 S.E.2d 192 (1996).

Because a prosecution for driving under the influence was pending when the 1995 amendment of O.C.G.A. § 40-6-392 regarding the requirements for certification was approved by the governor, the provisions applied even though it was impossible for the police to have complied with them. *Hobbs v. State*, 224 Ga. App. 314, 480 S.E.2d 330 (1997).

When alcoholic content test not mandatory. — There is no provision of law which makes it mandatory for the state to subject a person arrested for driving under the influence of intoxicants to a test to determine the alcoholic content of the person's blood in the absence of demand. *Hendrix v. State*, 125 Ga. App. 327, 187 S.E.2d 557 (1972).

Showing that test not completed within "operator's judgment" is not evidence of "refusal to submit." *Burson v. Collier*, 226 Ga. 427, 175 S.E.2d 660 (1970).

State required to show machine in good working order. — State is required to show that the machine on which blood tests were conducted was operated with all the machine's electronic and operating parts properly attached and in good working order. *Banks v. State*, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Authority of officer to designate type of chemical test. — O.C.G.A. § 40-5-67.1, read in pari materia with O.C.G.A. §§ 40-5-55 and 40-6-392, authorizes a law enforcement officer to designate the appropriate chemical test to be administered — breath, blood, urine, or other bodily substance — for the detection of the source of impairment as suspected by the officer. *State v. Hunter*, 221 Ga. App. 837, 473 S.E.2d 192 (1996).

Intoximeter performs "chemical analysis." — Intoximeter which determines the amount of alcohol in one's breath (by whatever means) and calculates therefrom the blood-alcohol content performs a "chemical analysis" or "chemical test." *Fisher v. State*, 177 Ga. App. 465, 339 S.E.2d 744 (1986).

Approval of breath test instrument. — Bureau of Investigation Division of Forensic Sciences substantially complied with the requirements of the Administrative Procedure Act in amending regulations permitting the use of a breath test instrument. *Corner v. State*, 223 Ga. App. 353, 477 S.E.2d 593 (1996).

Breath test determinative of blood-alcohol content. — Breath-alcohol test is as conclusive as a blood-alcohol test in determining the amount of alcohol in a person's blood and the results from a breath test can be the basis of a conviction for driving while under the influence of alcohol. *Fudge v. State*, 184 Ga. App. 590, 362 S.E.2d 147 (1987).

Subsection (a) of O.C.G.A. § 40-6-392 makes it clear that a breath test is used to determine the amount of alcohol in a person's blood. *Herndon v. State*, 187 Ga. App. 313, 370 S.E.2d 164 (1988).

Trial court properly reversed administrative suspension of a driver's license when the evidence did not show that the driver's breath test was properly administered as two breath samples were required to verify the accuracy of the breathalyzer. *Ga. Dep't of Pub. Safety v. Robinette*, 254 Ga. App. 884, 564 S.E.2d 726 (2002).

"Qualified person" requirement of O.C.G.A. § 40-6-392 applies to all blood test results showing drug content as well as alcoholic content. *Carr v. State*, 222 Ga. App. 776, 476 S.E.2d 75 (1996).

State was not required to prove that the person who drew the defendant's blood after the defendant was suspected of having swallowed cocaine the defendant was carrying and consented to a blood test was "qualified" to perform the test before the testimony of a forensic toxicologist could be admitted into evidence as that requirement only related to chemical tests performed where the state sought to prove that a defendant was driving under the influence, and the defendant was charged with cocaine possession and not with driving under the influence. *Millsap v. State*, 261 Ga. App. 427, 582 S.E.2d 568 (2003).

Examiner need not understand science behind machine. — O.C.G.A. § 40-6-392 does not demand that the examiner have an expert's knowledge of the underlying scientific principles governing the functioning of the machine. *Dotson v. State*, 179 Ga. App. 233, 345 S.E.2d 871 (1986) *Gutierrez v. State*, 228 Ga. App. 458, 491 S.E.2d 898 (1997).

Testimony by a toxicologist that the toxicologist was familiar with the workings of the urinalysis machine and that the machine was in good working order was sufficient to establish such fact for the jury; O.C.G.A. § 40-6-392 does not require that a toxicologist have an expert's knowledge of the underlying scientific principles governing the functioning of the machine. *Helmecki v. State*, 230 Ga. App. 866, 498 S.E.2d 326 (1998).

Mortician qualified. — When a licensed mortician who extracted blood from the deceased after a fatal accident testified to being in the mortician business for years and receiving training at the John College of Mortuary Science in

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Nashville, Tennessee, such technician was a qualified person under O.C.G.A. § 40-6-392. *Clark v. Jefferson Pilot Life Ins. Co.*, 209 Ga. App. 93, 432 S.E.2d 815 (1993).

Medical center employee qualified person to draw blood. — Full-time employee of a medical center whose only job was to “draw blood” and who had trained at the center to perform this function was a “qualified person” within the meaning of Ga. L. 1974, p. 633, § 1. *Gooch v. State*, 155 Ga. App. 708, 272 S.E.2d 572 (1980) (see O.C.G.A. § 40-6-392).

Forensic chemist qualified. — Testing of blood samples by a forensic chemist with the Division of Forensic Sciences, using a method approved by the division, satisfied the requirements of O.C.G.A. § 40-6-392. *Lewis v. State*, 215 Ga. App. 486, 451 S.E.2d 116 (1994); *Jordan v. State*, 223 Ga. App. 176, 477 S.E.2d 583 (1996); *Morrisette v. State*, 229 Ga. App. 420, 494 S.E.2d 8 (1997); *Bailey v. State*, 229 Ga. App. 869, 494 S.E.2d 672 (1998).

Technician was a “qualified person” to administer a breath test when the technician took a course in breath analysis, trained on the machine used to test the defendant, and was certified by the police academy. *Eubanks v. State*, 175 Ga. App. 244, 333 S.E.2d 3 (1985).

Medical laboratory technician qualified. — Department of Human Resources certificate signed by a reviewing official and stating that the person who drew the defendant’s blood was classified as a medical laboratory technician was in substantial compliance with the requirement of O.C.G.A. § 40-6-392 regarding proof of the technician’s qualifications. *Bazemore v. State*, 225 Ga. App. 741, 484 S.E.2d 673 (1997).

Unlicensed technician’s testimony admissible. — Testimony of an unlicensed crime lab technician as to the technician’s tasks in the initial screening test was admissible when the technician did not offer any opinion as to chemical analysis, or interpret any testing, nor make any report as to the results of testing; the technician’s duties were done in accordance with lab procedure, under supervi-

sion of a doctor, and did not constitute actual performance of the chemical analysis. *Martin v. State*, 214 Ga. App. 614, 448 S.E.2d 471 (1994).

More than one test may be requested by the accused, for example a breath test and a blood test. Failure to allow the defendant an additional test or tests, absent a finding that such failure is “justifiable,” is a violation of O.C.G.A. § 40-6-392 and precludes the state’s use of the state’s tests. *Turner v. State*, 199 Ga. App. 466, 405 S.E.2d 296 (1991).

There is nothing about the plain language of either O.C.G.A. § 40-5-67.1(b)(3) or paragraph (b)(2) of O.C.G.A. § 40-6-392 which would preclude the defendant from affirmatively choosing to have the state’s qualified testing officer perform an additional breath test at the defendant’s expense. *Nawrocki v. State*, 235 Ga. App. 416, 510 S.E.2d 301 (1998).

State has no duty to show defendant’s waiver of additional test. — State is under no duty to show the defendant’s affirmative waiver of an additional chemical test. A duty is placed upon an officer who administers or causes to be administered a chemical test for alcoholic content in bodily fluids to advise the testee that the testee is entitled to an independent test of the testee’s own choosing, and once that duty is fulfilled by the officer, the statutory obligation is satisfied. *State v. Griffin*, 204 Ga. App. 459, 419 S.E.2d 528 (1992).

Driver’s right to additional test notification. — It is necessary for the arresting officer to notify the driver of the driver’s right to have an additional test made before the driver could be burdened with the responsibility of having to request the test. *Nelson v. State*, 135 Ga. App. 212, 217 S.E.2d 450 (1975); *Garrett v. Department of Pub. Safety*, 237 Ga. 413, 228 S.E.2d 812 (1976).

In order to utilize the results of a blood-alcohol test to establish criminal liability against a defendant, it must be shown that the defendant was advised of his or her right to have additional tests made, but this rule does not apply to a person who is not a defendant. *Johnson v. State*, 146 Ga. App. 835, 247 S.E.2d 513 (1978).

Rights contemplated by O.C.G.A. § 40-6-392 include a warning that the suspect has a right to an individual and independent test to corroborate or contest the state-administered test. *State v. Johnston*, 160 Ga. App. 71, 286 S.E.2d 47 (1981), *aff'd*, 249 Ga. 413, 291 S.E.2d 543 (1982).

When a law enforcement officer requests a person to submit to a chemical test because of acts alleged to have been committed while operating a motor vehicle under the influence of alcohol or drugs, and the officer arrests that person on this ground, the officer must inform the person at the time of arrest of the person's right to an independent chemical analysis to determine the amount of alcohol or drugs present in the person's blood. *Perano v. State*, 250 Ga. 704, 300 S.E.2d 668 (1983).

Advisement of rights deemed deficient. — Officer's advice to the defendant that, "[a]fter submitting to the required testing, you are entitled to additional chemical tests at your own expense" was deficient because the advice completely failed to inform the defendant that the defendant could choose the defendant's own qualified person to administer the additional test. *State v. Causey*, 215 Ga. App. 85, 449 S.E.2d 639 (1994).

Criteria for provision of independent test. — It is incumbent on the trial court to determine whether a failure or inability to obtain an additional test is justified. In making that determination, the trial court must decide if, under the totality of the circumstances, the officer made a reasonable effort to accommodate the accused who seeks an independent test. Factors to be considered include, but are not limited to, the following: (1) availability of or access to funds or resources to pay for the requested test; (2) a protracted delay in the giving of the test if the officer complies with the accused's request; (3) availability of police time and other resources; (4) location of requested facilities; and (5) opportunity and ability of the accused to make arrangements personally for the testing. *Wells v. State*, 210 Ga. App. 165, 435 S.E.2d 523 (1993).

Defendant's right to an independent blood alcohol content test under O.C.G.A. § 40-6-392(a)(3) was not invoked by ask-

ing the officer if the defendant could blow again because the defendant admitted that, at the time, the defendant did not know there was a difference between an independent test and the state's test and that the defendant was satisfied when the officer said that the defendant could blow again down at the station. *Waterman v. State*, 299 Ga. App. 630, 683 S.E.2d 164 (2009).

Officer's assistance in obtaining. — When the defendant requested an independent test be performed and the officer suggested that the defendant telephone the only facility in the county which performed independent chemical analysis, to find out the procedure and the price and make the necessary arrangements, and when the officer dialed the telephone number for the facility, the facts support the trial court's findings that the officer made a reasonable effort to accommodate the defendant's efforts to obtain an independent test and that the defendant was not impeded from doing so by any conduct on the part of law enforcement. *Pruitt v. State*, 203 Ga. App. 125, 416 S.E.2d 524, *cert. denied*, 203 Ga. App. 907, 416 S.E.2d 524 (1992).

When there was no evidence that there was a hospital in the locality of the defendant's arrest which would have performed a blood test on the defendant without a doctor's order if the officer had transported the defendant there, there was no corresponding duty on behalf of the officer to transport the defendant to that hospital, and the officer satisfied the officer's duty by informing the defendant of the right to an independent test and giving the defendant the opportunity to make arrangements for one by providing the defendant with a telephone and a telephone book. *Wells v. State*, 210 Ga. App. 165, 435 S.E.2d 523 (1993).

While an officer must not prevent a defendant from exercising the right to an independent test, it is not the officer's duty to ensure the performance of such a test. *Crawford v. City of Forest Park*, 215 Ga. App. 234, 450 S.E.2d 237 (1994).

After advising a driver of the right to an independent chemical test, an officer was not required to ask the driver where and by whom the driver wished the test per-

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formed and, after the driver chose an independent test, but did not specify any choice of personnel, the officer's action in taking the driver to the nearest hospital was reasonable. *McDaniel v. State*, 218 Ga. App. 555, 462 S.E.2d 446 (1995) *Wells v. State*, 227 Ga. App. 521, 489 S.E.2d 307 (1997).

Officer's refusal to take the defendant to a reasonably close facility as requested by the defendant on the sole basis that the officer was unfamiliar with the area in which the hospital was located was not, in and of itself, sufficient grounds to deny the defendant's request for an independent test by personnel of the defendant's own choosing. *Joel v. State*, 245 Ga. App. 750, 538 S.E.2d 847 (2000).

Motion to suppress breath test results was upheld after the booking officer denied the defendant an opportunity to have an independent test, under O.C.G.A. § 40-6-392(a)(3), on the rationale that the booking officer needed to ask the arresting officer for advisement, and the booking officer made no effort to satisfy the defendant's request, forcing the defendant to believe that it was too late to receive an independent test. *State v. Braunecker*, 255 Ga. App. 685, 566 S.E.2d 409 (2002).

Defendant's conviction for underage driving under the influence (blood alcohol content) was reversed as the trial court improperly denied the defendant's motion in limine premised on the arresting officer's failure to provide the defendant with an independent chemical test of the defendant's blood after the defendant plainly requested one; that the defendant's request for a blood test was made prior to the defendant's arrest and the giving of the implied consent warnings was not determinative under these facts and the officer's failure to inquire into the defendant's request for an independent test required the suppression of the results of the state-administered test. *McGinn v. State*, 268 Ga. App. 450, 602 S.E.2d 209 (2004).

Verbatim recitation as warning not required. — It is sufficient that the defendant was fully advised of the defendant's obligation to submit to a test, the

consequences of refusal to do so, and the defendant's right to have an independent test of the various bodily substances made by personnel of the defendant's own choosing. *Howard v. Cofer*, 150 Ga. App. 579, 258 S.E.2d 195 (1979).

When the driver was suspected of intoxication, the driver was not entitled to a warning which tracked the exact language of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392), requiring suspension of a license for failure to submit to a test. *Ivie v. State*, 151 Ga. App. 496, 260 S.E.2d 543 (1979); *Martin v. State*, 214 Ga. App. 614, 448 S.E.2d 471 (1994).

Blood or breath testing not prerequisite to requirement for urine sample. — O.C.G.A. § 40-5-67.1, construed with O.C.G.A. §§ 40-5-55 and 40-6-392, does not require blood or breath testing before an officer may require a suspect to provide a urine sample for analysis for the presence of alcohol, drugs, or marijuana. *State v. Sumlin*, 224 Ga. App. 205, 480 S.E.2d 260 (1997).

Independent testing notice inapplicable to screening tests. — Since initial alcohol screening tests are not governed by O.C.G.A. § 40-6-392 and since the motorist was not under arrest at the time the screening test was administered, there was no requirement that the administration of the screening test be preceded by advising the motorist of the motorist's right to an independent test. *Turrentine v. State*, 176 Ga. App. 145, 335 S.E.2d 630 (1985).

Independent testing responsibility of arrestee. — Although law enforcement officers are required to make reasonable efforts to accommodate requests for independent tests, it is not the officers' duty to ensure that the independent test was performed. *Thornhill v. State*, 202 Ga. App. 826, 415 S.E.2d 473 (1992).

Failure to obtain independent test based on defendant's actions. — State-administered breath test results were admissible despite defendant's request for an independent test because the evidence showed that the officer was willing to take defendant for another test but that the defendant refused to go with the arresting officer, demanding another driver, and none was available. *Luckey v.*

State, 313 Ga. App. 502, 722 S.E.2d 114 (2012).

Form establishes notice to accused regarding additional chemical test. — Simple form, completed, signed, and dated by the accused or an equivalent mechanism will suffice to establish that the accused has either availed oneself of the accused's opportunity to undertake an additional chemical test or waived that right. *Steed v. City of Atlanta*, 172 Ga. App. 839, 325 S.E.2d 165 (1984).

Arrestee free to have additional test administered. — If arrestee was not willing to have the determination of the arrestee's blood-alcohol level "at the alleged time" rest exclusively upon the results of the state's intoximeter examination, the arrestee was free to have a qualified person of the arrestee's own choosing administer an additional test. *State v. Richardson*, 186 Ga. App. 888, 368 S.E.2d 825 (1988).

Paragraph (a)(3) of O.C.G.A. § 40-6-392 allows one accused of driving under the influence of alcoholic beverages the right to have a chemical analysis of one's blood and urine by a qualified person of one's own choosing, and there is a corresponding duty on the part of law enforcement officers not to refuse or fail to allow the accused to exercise that right. *State v. Griffin*, 204 Ga. App. 459, 419 S.E.2d 528 (1992).

When arrestee to be informed of right to additional test. — Right to have an additional test must be made known to the defendant at the time of arrest in order that the defendant may, if the defendant so chooses, challenge the accuracy of the chemical test administered by the state. *Nelson v. State*, 135 Ga. App. 212, 217 S.E.2d 450 (1975).

Legislature intended that the right to have additional test made be made known to the defendant at the time of arrest in order that the defendant may, if the defendant so chooses, challenge the accuracy of the chemical test administered by the state at the only time such a challenge would be meaningful. *Garrett v. Department of Pub. Safety*, 237 Ga. 413, 228 S.E.2d 812 (1976).

Failure to inform the defendant at the time of the defendant's arrest of the defen-

dant's right to an independent chemical analysis did not preclude admission of intoximeter test results when the defendant was so emotionally upset upon being arrested that the arresting officer was unable to advise the defendant of the defendant's implied consent warning but the warning was given prior to administration of the test. *Hadden v. State*, 180 Ga. App. 496, 349 S.E.2d 770 (1986).

Payment of independent test by defendant. — Defendant was not denied the right to obtain an independent breath/blood test when the officer merely informed the defendant that the defendant would have to pay for the test even though the defendant did not have cash or credit at that time. *Avant v. State*, 251 Ga. App. 165, 554 S.E.2d 194 (2001).

Evidence inadmissible when untimely notice to defendant. — O.C.G.A. § 40-6-392 requires that an officer inform a criminal defendant at the time of the defendant's arrest of the defendant's right to an independent chemical analysis to determine the amount of alcohol or drugs present in the blood. Thus, when the arresting officer didn't inform the defendant of the defendant's rights regarding the test until after the officer took the defendant to jail, the defendant's refusal to blow into a breath machine was not admissible at trial. *Vandiver v. State*, 207 Ga. App. 836, 429 S.E.2d 318 (1993).

Officer's failure to carry a warning card was not a good reason for a delay of more than 45 minutes in advising the defendant of defendant's rights. *Dawson v. State*, 227 Ga. App. 38, 488 S.E.2d 114 (1997).

When an officer did not give the correct warning at the time of arrest, results of a breath test were inadmissible, even though the officer asked the defendant after the test whether the defendant wanted another test of the defendant's own choosing. *State v. O'Donnell*, 225 Ga. App. 502, 484 S.E.2d 313 (1997).

Counsel was ineffective for failing to file a motion to suppress the defendant's blood sample, which had tested positive for methamphetamine, because the defendant was not read the defendant's implied consent rights until nearly an hour after the defendant was arrested for leaving the

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scene of an accident, instead of at the time of the defendant's arrest as required by O.C.G.A. §§ 40-5-55 and 40-6-392(a)(4). *Thrasher v. State*, 300 Ga. App. 154, 684 S.E.2d 318 (2009).

Defendant's blood test request "not premature." — Trial court erred by finding that the defendant's request for a blood test was premature because the state had not yet performed the state's own test and thus required remanding of the case to determine whether the defendant's request was ever actually withdrawn so as to admit the results of the state-administered breath test. *Duckett v. State*, 206 Ga. App. 651, 426 S.E.2d 271 (1992).

Demand for blood test abandoned.

— Trial court's determination that the defendant abandoned any earlier demand for a blood test after being afforded a second breath test was supported by the evidence and therefore was not clearly erroneous. *Morgan v. State*, 212 Ga. App. 394, 442 S.E.2d 257 (1994).

Right to independent testing valid.

— In the absence of an affirmative showing in the record of fraud or deceit by the police calculated to thwart an honest exercise of the defendant's statutory rights, the mere fact that the defendant was taken to a facility that would not test the defendant's drawn blood does not render the advice given the defendant, regarding the defendant's right to independent testing, invalid. *State v. Griffin*, 204 Ga. App. 459, 419 S.E.2d 528 (1992).

Defendant's right to independent test. — When the defendant offered no evidence to rebut the officer's testimony that the officer read the defendant the Implied Consent Warning card, and no objection to the evidence was raised, the court found no merit to the defendant's argument that the state's evidence failed to establish that the defendant was advised of the defendant's right to an independent test as required by O.C.G.A. § 40-6-392. *Walker v. State*, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

State's duty to obtain independent analysis, not sample. — Trial court

properly determined that a police officer's failure to take the defendant to another hospital to have the withdrawn blood sample actually analyzed after discovering that the original hospital would not perform such an analysis was not reasonable in light of the defendant's request for an independent blood test; therefore, the trial court properly granted the defendant's motion to suppress the results of the state's intoximeter test. *State v. But-ton*, 206 Ga. App. 673, 426 S.E.2d 194 (1992).

Once the accused requests an independent test, the officer's duty is not simply to assist the individual in getting the individual's blood drawn. Instead, the officer must accommodate the accused until the accused obtains an admissible test or until it is determined that despite reasonable efforts such a test cannot be obtained. *Hulsinger v. State*, 221 Ga. App. 274, 470 S.E.2d 809 (1996).

When statutory rights to alternate tests attach. — Statutory rights to alternate tests do not attach until state has performed the state's tests. Nor is a request for an alternate test made prior to testing by the state effective to trigger rights under Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392). *Huff v. State*, 144 Ga. App. 764, 242 S.E.2d 361 (1978).

Right to an alternate test by a person of the defendant's own choosing does not attach until the state has performed the state's test. *Modlin v. State*, 176 Ga. App. 83, 335 S.E.2d 312 (1985); *Rawl v. State*, 192 Ga. App. 57, 383 S.E.2d 903 (1989).

O.C.G.A. § 40-6-392 gives an accused the right to an independent chemical test when there has been a test administered at the request of law enforcement officers, but the accused did not have the right to refuse the police-administered test and demand one of the defendant's own choosing. *Lufburrow v. State*, 206 Ga. App. 250, 425 S.E.2d 368 (1992).

Defendant's failure to complete a breath test without justification negated the defendant's right to an alternative test. *Allen v. State*, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

State's burden that test results obtained according to guidelines. — State satisfied the state's burden of prov-

ing that its test results were obtained in accordance with the statutory guidelines when it is without dispute that the defendant was properly advised of the defendant's right to an additional chemical test and the trial court obviously accepted the defendant's position that the defendant had indeed made such a request. *Pruitt v. State*, 203 Ga. App. 125, 416 S.E.2d 524, cert. denied, 203 Ga. App. 907, 416 S.E.2d 524 (1992).

State's failure to establish that the defendant was apprised of the defendant's right to an independent test of the defendant's own choosing precludes admission of the intoximeter results. *State v. Peters*, 211 Ga. App. 755, 440 S.E.2d 515 (1994).

Independent testing responsibility of arrestee. — It is the responsibility of the arrestee, not of the officer, to designate the specifics of independent testing and the officer must be apprised by the arrestee of those specifics before the officer has a duty to facilitate the arrestee's election. *State v. Willis*, 184 Ga. App. 639, 362 S.E.2d 444 (1987).

Request for independent test. — Defendant's questions concerning the procedure which would be followed if the defendant was arrested for driving under the influence and the defendant's response after being told the defendant was entitled to an independent test showed that the defendant did make a sufficient request for an independent test. *Church v. State*, 210 Ga. App. 670, 436 S.E.2d 809 (1993).

Defendant's words, "Could I get a blood test?" could not be reasonably construed as a request for an additional, independent test under O.C.G.A. § 40-6-392(a)(3). Under the circumstances, it appeared that the defendant's request concerned the type of test the state would administer—blood versus breath—not a desire for an additional test. *Mathis v. State*, 298 Ga. App. 817, 681 S.E.2d 179 (2009).

Trial court did not err in granting the defendant's motion to suppress evidence of a state-administered breath test because the state failed to reasonably accommodate the defendant's request for an independent blood test; when an officer learned that the defendant did not have sufficient cash for a blood test at one of the

recommended hospitals the defendant should have been offered the opportunity to use a telephone to make other arrangements, and the officer's unilateral determination that the defendant would be unable to pay for the blood test, without confirming the hospitals' policies regarding payment and without offering to accommodate the defendant in obtaining a method of payment, was insufficient. *State v. Davis*, 309 Ga. App. 558, 711 S.E.2d 76 (2011).

Judicial notice in determining opportunities for independent test. — Trial court's "taking judicial notice" of the fact that the defendant would have only been permitted to make a collect call from jail was not an impermissible factor in resolving the question of whether the defendant was given a reasonable opportunity to make arrangements for the independent blood test the defendant wanted. *State v. Mallory*, 180 Ga. App. 815, 350 S.E.2d 823 (1986).

Ample opportunity for taking independent blood test required. — Defendant was not given an ample opportunity to take an independent blood test when the officer who took the defendant to a hospital for such a test told the defendant that the defendant did not have enough money to take the test, would not let the defendant talk to a clerk personally to negotiate another method of payment, and would not allow the defendant to contact relatives who lived near the hospital for financial assistance. *State v. Buffington*, 189 Ga. App. 800, 377 S.E.2d 548 (1989); *Brady v. City of Lawrenceville*, 206 Ga. App. 395, 425 S.E.2d 404 (1992).

Defendant was improperly denied the defendant's right to have an independent test performed when the defendant refused to go to any of the three hospitals chosen by the arresting officer and was denied access to another facility approximately ten miles from the location of the arrest. *Akin v. State*, 193 Ga. App. 194, 387 S.E.2d 35, cert. denied, 193 Ga. App. 909, 387 S.E.2d 351 (1989).

Evidence that the arresting officer refused to authorize the defendant's requests for testing at local hospitals, despite the defendant's ability to pay for such testing, authorized the trial court's

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finding that a reasonable effort was not made to accommodate the defendant's request for an independent blood test. *State v. Vandervoort*, 215 Ga. App. 72, 449 S.E.2d 617 (1994).

Because the arresting officer failed to make a reasonable effort to accommodate the defendant's request to obtain an independent blood test in accordance with O.C.G.A. § 40-6-392(a)(3), but instead rebuffed every suggestion the defendant made in order to secure independent testing and, despite security risks, accommodations could have been made, the trial court did not err in granting the defendant's motion in limine to suppress the results of the state-administered breath test. *State v. Howard*, 283 Ga. App. 234, 641 S.E.2d 225 (2007).

Denial of opportunity to obtain independent test. — Motion to suppress results of a state administered breath test was properly granted when police officers never gave the defendant the opportunity to ascertain the defendant's family doctor's telephone number or address in order to obtain a requested independent test. *State v. White*, 188 Ga. App. 658, 373 S.E.2d 840 (1988).

When an arresting officer failed to warn the defendant ahead of time of a hospital's payment policy for independent tests, even though the officer was fully aware that the defendant did not have sufficient funds to obtain a blood test at the hospital but nevertheless took the defendant there without warning the defendant of the policy, so as to enable the defendant to attempt to make arrangements to secure the necessary funds, the officer failed to make a reasonable effort to accommodate the defendant's desire for an independent chemical test and the intoximeter test results should have been excluded. *Love v. State*, 195 Ga. App. 392, 393 S.E.2d 520 (1990); *State v. Brodie*, 216 Ga. App. 198, 453 S.E.2d 786 (1995).

When a defendant was transported from one facility to another and made the request for independent tests once the defendant was allowed to make telephone calls, the defendant's request was made within a reasonable time. Because the

state failed to present any evidence at the suppression hearing from which the trial court could find the failure to respond to the defendant's timely request was justified, the evidence of the results of the breath test should have been suppressed. *Covert v. State*, 196 Ga. App. 679, 396 S.E.2d 596 (1990).

Court's failure to suppress the result of an intoximeter test was error when the defendant asked the arresting police officer to take the defendant to the closest hospital which could administer a blood test, and the officer made an apparently innocent mistake in assuming that no hospitals in the area could administer a legally admissible test. The end result was that the defendant was unable to have an independent blood test which, in effect, amounted to an unjustifiable refusal to permit the defendant an opportunity for an independent test by a person of the defendant's own choosing. *O'Dell v. State*, 200 Ga. App. 655, 409 S.E.2d 54, cert. denied, 200 Ga. App. 896, 409 S.E.2d 54 (1991).

Upon arrest for driving under the influence, the defendant did not waive the right to a second test under O.C.G.A. § 40-6-392 since although the defendant did not have cash to pay for the test, the defendant did have a credit card and automated teller machine card; police had the duty to reasonably accommodate the defendant and should have allowed the defendant to use a telephone or should have taken the defendant where the defendant could use the teller machine card to obtain necessary cash. *Butts v. City of Peachtree City*, 205 Ga. App. 492, 422 S.E.2d 909 (1992).

Police officer did not make a reasonable effort to accommodate the defendant's request to obtain an independent breath test after admitting to the defendant that the intoximeter machine used to test the defendant was not functioning properly and a functioning machine was available in the same room. *State v. Beall*, 211 Ga. App. 799, 440 S.E.2d 537 (1994).

Police officer's testimony that the officer did not accommodate the defendant's request for an independent blood test, as was required pursuant to O.C.G.A. § 40-6-392(a)(3), because the officer spec-

ulated that the defendant would bond out of jail and go get the defendant's own test did not show that the state either complied with the statute or that the state offered sufficient justification for not accommodating the request; thus, the defendant's convictions for driving under the influence to the extent the defendant was less safe and driving with an unlawful blood alcohol content had to be reversed. *Smith v. State*, 250 Ga. App. 583, 552 S.E.2d 528 (2001).

Denial of the defendant's motion to suppress for failure to give the defendant a reasonable opportunity to have an additional breath test performed by a person of the defendant's own choosing pursuant to O.C.G.A. § 40-6-392(a)(3) was not error; complying with the defendant's request would have taken a trooper away from an accident with injuries that required the trooper's presence, the location requested by the defendant was over 40 miles away and outside the trooper's territory, and there was no evidence that the defendant had made arrangements for a test by the defendant's personal physician. *Smith v. State*, 277 Ga. App. 81, 625 S.E.2d 497 (2005).

Officer's failure to drive a defendant to the defendant's physician's office outside of the officer's jurisdiction, 30-45 minutes away, at a time when the office was likely closed and when the officer's jurisdiction was short-handed, was justified. The officer offered to take the defendant to another independent testing facility and to give the defendant a phone book to find another facility. *Ritter v. State*, 306 Ga. App. 689, 703 S.E.2d 8 (2010).

Defendant was not denied opportunity to obtain independent test. — After the defendant was arrested for driving under the influence, and there was conflicting testimony on whether the jailer prevented the individual who came to the defendant's assistance from obtaining an independent test for the defendant, sufficient evidence was presented from which the trial court could rightly conclude that a reasonable effort was made to accommodate the defendant's request for an independent test and that the defendant was not prevented by any action on the part of the law enforcement authority from ob-

taining the test. *Gray v. State*, 194 Ga. App. 811, 392 S.E.2d 290 (1990).

When the defendant was offered the opportunity to obtain an independent test but the medical facility selected refused to perform the test, and when again offered the opportunity to have an independent test conducted, the defendant did not select another facility, but became argumentative with the police officers, the trial court properly found that the defendant was afforded a reasonable opportunity to make arrangements for an independent test, but that the defendant had not done so. *Jenkins v. State*, 198 Ga. App. 843, 403 S.E.2d 859 (1991).

When the defendant exercised the defendant's right to an independent test of the defendant's own choosing by demanding, in writing, an additional breath test, which was performed 20 minutes after the first test by the same officer on the same intoximeter, and yielded the same result, the defendant was afforded the opportunity to obtain an independent test of the defendant's blood-alcohol content. *Caldwell v. State*, 202 Ga. App. 729, 415 S.E.2d 653 (1992).

Because the trial court found that the arresting officer made a reasonable effort to accommodate the defendant's request for an independent blood test pursuant to O.C.G.A. § 40-6-392(a)(3), the court did not err in denying the defendant's motion to suppress the blood test. *Whittle v. State*, 282 Ga. App. 64, 637 S.E.2d 800 (2006).

Waiver of alternative test need not be shown. — State is not required to make an affirmative showing that the driver waived the driver's right to an independent blood-alcohol test by a person of the driver's own choosing. *Hudgins v. State*, 176 Ga. App. 719, 337 S.E.2d 378 (1985).

Paragraph (a)(4) of O.C.G.A. § 40-6-392 does not require an affirmative showing of a waiver of right to additional chemical test or an actual request for additional test. Test is valid if the defendant was informed of the defendant's rights to additional testing at the time of the defendant's arrest. *State v. Dull*, 176 Ga. App. 152, 335 S.E.2d 605 (1985); *Pruitt v. State*, 203 Ga. App. 125, 416 S.E.2d 524, cert.

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denied, 203 Ga. App. 907, 416 S.E.2d 524 (1992).

Arresting officer must advise the testee that the testee is entitled to an independent test (for alcoholic consumption) of the testee's own choosing but need not show that the defendant testee either waived the defendant's right to such a test or sought the additional test. *Snelling v. State*, 176 Ga. App. 192, 335 S.E.2d 475 (1985).

State need not establish that the defendant made an affirmative waiver of the defendant's right to an independent test. *Martin v. State*, 176 Ga. App. 871, 338 S.E.2d 298 (1985).

Sufficient compliance with the "implied consent" statute is established by evidence showing that the accused was given timely notice of the accused's implied consent rights and thereafter made no request for an independent chemical test. *Martin v. State*, 176 Ga. App. 871, 338 S.E.2d 298 (1985).

Affirmative showing of waiver or request for an additional test is not required. *State v. Carter*, 178 Ga. App. 677, 344 S.E.2d 499 (1986).

State is under no duty to show a driver's affirmative waiver of an additional chemical test. *State v. Tosar*, 180 Ga. App. 885, 350 S.E.2d 811 (1986).

No reversal when state testified to only one breath test. — Appeals court rejected the defendant's argument that the evidence was insufficient to support a conviction for driving under the influence of alcohol per se because only one breath test was testified to by the state and O.C.G.A. § 40-6-392(a)(1)(B) mandated that two breath tests had to be given; moreover, even if the court were to agree with this contention, the defendant waived this argument by failing to make any objection at trial to the admission of the single breath test. *Annaswamy v. State*, 284 Ga. App. 6, 642 S.E.2d 917 (2007).

Driver responsible for costs of alternative tests. — Law does not require the government to pay for two tests. The second is the driver's option, so that the driver may challenge the results of the

officer's requested test. The cost of the optional test, to be administered by a qualified person of the driver's own choosing, must be borne by the driver, at least when the driver is able to pay. *Thompson v. State*, 175 Ga. App. 645, 334 S.E.2d 312 (1985).

Duty of officers to take driver to hospital for requested test. — Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392) gives one accused of driving under the influence of alcoholic beverages the right to have a chemical analysis of the accused's blood and urine by a qualified person of the accused's own choosing. There is coupled with the right granted to the accused, however, a corresponding duty on the part of law enforcement officers not to deny the accused that right by refusing or failing to take the accused to a hospital for the test the accused wants and is reasonably entitled to have. *Puett v. State*, 147 Ga. App. 300, 248 S.E.2d 560 (1978).

Before duty of police arises to transport the defendant to a location of independent test, and before there is a breach of that duty which may give reason to suppress the evidence of the state-administered test, the defendant must first show that the defendant had made arrangements with a qualified person of the defendant's own choosing, that the test would be made if the defendant came to the hospital, that the defendant so informed the personnel at the jail where defendant was under arrest, and that those holding the defendant either refused or failed to take the defendant to the hospital for that purpose. *Lovell v. State*, 178 Ga. App. 366, 343 S.E.2d 414 (1986); *Melvin v. State*, 205 Ga. App. 799, 423 S.E.2d 718 (1992).

State's test not suppressed due to defendant's inability to obtain test. — Mere fact that a defendant was unable to obtain a chemical test of the defendant's own choosing fails to disclose any reason to suppress the results of the state's breathalyzer test. *Grizzle v. State*, 153 Ga. App. 364, 265 S.E.2d 324 (1980); *Harper v. State*, 164 Ga. App. 230, 296 S.E.2d 782 (1982); *Melvin v. State*, 205 Ga. App. 799, 423 S.E.2d 718 (1992).

When the defendant is afforded the opportunity for an independent test, the fact

that the defendant is unable to obtain the method of the defendant's own choosing does not of itself require suppression of the state's test results. *Dozier v. State*, 187 Ga. App. 51, 369 S.E.2d 328 (1988); *Cadden v. State*, 213 Ga. App. 291, 444 S.E.2d 383 (1994).

Consent to test valid when advice properly given. — When a driver has been advised of the driver's rights to submit to a chemical test as required by paragraph (a)(4) of O.C.G.A. § 40-6-392, the driver's consent to submit to the test is a valid informed choice. *Griggs v. State*, 167 Ga. App. 581, 307 S.E.2d 75 (1983).

Driver not entitled to lawyer at time of test. — Driver is not entitled to the presence of a lawyer, as requested, at the time the driver was asked to submit to a chemical test. *Cogdill v. Department of Pub. Safety*, 135 Ga. App. 339, 217 S.E.2d 502 (1975).

One is not entitled to advice of counsel when confronted with a decision as to whether to submit to a test under the implied consent law. *Oyler v. State*, 175 Ga. App. 486, 333 S.E.2d 690 (1985).

Timely notice to defendant. — Arresting officer adequately complied with the requirements of O.C.G.A. § 40-6-392(a)(4) when the officer gave the warning to the defendant prior to administering the intoximeter test approximately ten minutes after the defendant's arrest. *Martin v. State*, 211 Ga. App. 561, 440 S.E.2d 24 (1994).

Trial court did not err in denying a motion to suppress evidence of the blood-alcohol results obtained after the defendant's vehicle was stopped as it was determined that the defendant was driving under the influence, and the police officer waited until a proper time to notify the defendant of the right to take a chemical test; the defendant consented to such a test as a driver using a vehicle on the Georgia highways and the delay in administering the implied consent warning was due to the defendant's drunken condition and difficult behavior. *Cain v. State*, 274 Ga. App. 533, 617 S.E.2d 567 (2005).

Advisement of rights timely although officer momentarily interrupted. — Results of the defendant's intoximeter test were admissible because

the arresting officer advised the defendant of the defendant's rights under the implied consent law as close in proximity to the instant of arrest as the circumstances warranted since after the officer stopped the defendant and put the defendant in the patrol car, the officer got a call and went after another vehicle, picked up the driver and then took both of the drivers to the police station and read the defendant the implied consent rights while the drivers were in the patrol car. *Fore v. State*, 180 Ga. App. 196, 348 S.E.2d 579 (1986).

Driver too intoxicated to understand officer's advisement of rights.

— When an investigating officer testified that the officer did not advise the appellant of appellant's rights concerning intoxicant tests because, based on the officer's observation, the appellant was incapable of understanding the advice because the appellant was unconscious or only semi-conscious, and when the appellant's testimony was supported by facts that the appellant was lying flat on the appellant's back with an oxygen mask covering the appellant's face, had a blood-alcohol count of .20, and was in apparent pain while in the emergency room, it could not be said that the trial court erred in denying the appellant's motions to suppress the results of a chemical test. *Rogers v. State*, 163 Ga. App. 641, 295 S.E.2d 140 (1982).

Non-English speaking driver. — When the law enforcement officer cannot communicate with the driver because the driver cannot speak English, any failure to obtain an additional test is justifiable and the results of the state-administered tests are admissible. *State v. Tosar*, 180 Ga. App. 885, 350 S.E.2d 811 (1986).

Retention of blood samples for unconscious defendant. — State is not required to take and retain blood samples for use by an unconscious defendant in the event the defendant desires an independent test by someone of the defendant's own choosing after regaining consciousness. *Bartell v. State*, 181 Ga. App. 148, 351 S.E.2d 495 (1986).

State need not preserve breath sample. — Trial court did not err in ruling that the state was not required to preserve a breath sample for later independent testing by the defendant nor did

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the court err in denying the appellant's motion for mistrial on that basis. *Kuptz v. State*, 179 Ga. App. 150, 345 S.E.2d 670 (1986).

Defendant's failure to recall not inconsistent with state's showing of refusal. — Defendant's failure to recall the circumstances following a collision did not contradict the state's prima facie showing that the defendant was in a communicative condition — not dead, unconscious or otherwise incapable of refusing the test — when informed of the defendant's rights and thereafter refused chemical testing of the defendant's blood. *Duncan v. State*, 183 Ga. App. 368, 358 S.E.2d 910 (1987).

Timely test, with administratively approved methods, not suppressed. — From the terms of paragraph (a)(1) of O.C.G.A. § 40-6-392, it is clear that the chemical test of an arrestee's breath is intended to reflect the arrestee's blood-alcohol level at the "alleged time" that the arrestee was driving under the influence, not at some later time, and it is also clear that the test is to be conducted in accordance with methods which have been administratively approved, not in accordance with any other "approved" methods. When there is no evidence that a "20-minute" rule has ever been administratively approved, an arrestee is not entitled to have suppressed from evidence the results of an intoximeter test which was shown to have been conducted within 20 minutes of the "alleged time" and in accordance with all administratively approved methods. *State v. Richardson*, 186 Ga. App. 888, 368 S.E.2d 825 (1988).

Retest allowed. — When, due to inadvertence, a breathalyzer test of a defendant's breath cannot be completed, and a retest is possible without inconveniencing the defendant and without delay, such a retest is not a violation of the defendant's rights and is not a basis for suppression of the results of the test. *Montgomery v. State*, 174 Ga. App. 95, 329 S.E.2d 166 (1985).

Lack of opportunity to take urine test not error. — Fact that a defendant who was given a breathalyzer test and a blood test requested by the defendant did

not have the opportunity to take a urine test was not error. *Massengale v. State*, 174 Ga. App. 480, 330 S.E.2d 417 (1985).

Evidence showing chemical test in statutory compliance. — See *McNair v. State*, 177 Ga. App. 502, 339 S.E.2d 773 (1986); *Magher v. State*, 199 Ga. App. 508, 405 S.E.2d 327 (1991).

Trial court erred in suppressing the results of a blood alcohol content breath test when the test was conducted in accordance with methods adopted by the Division of Forensic Sciences of the Georgia Bureau of Investigation; any deviation from the machine's operator's manual went to the weight and not to the admissibility of the results, and the 20 minute waiting period between taking samples was not part of the approved methods of testing. *State v. Palmaka*, 266 Ga. App. 595, 597 S.E.2d 630 (2004).

Admissibility of Results

Admissibility of test results into evidence in a criminal proceeding is affected by O.C.G.A. § 40-6-392. *State v. Johnston*, 160 Ga. App. 71, 286 S.E.2d 47 (1981), *aff'd*, 249 Ga. 413, 291 S.E.2d 543 (1982).

Under O.C.G.A. § 40-6-392, a chemical analysis of a person's breath is admissible in a criminal proceeding for the offense of driving under the influence of alcohol, but only if obtained in accordance with specific statutory guidelines. *State v. Johnston*, 160 Ga. App. 71, 286 S.E.2d 47 (1981), *aff'd*, 249 Ga. 413, 291 S.E.2d 543 (1982).

Implied consent warning properly advised the driver of the purposes for which the driver's blood was to be tested, and the test results were thus admissible in a prosecution for driving with the presence of marijuana in the driver's blood. *Radcliffe v. State*, 234 Ga. App. 576, 507 S.E.2d 759 (1998).

Trial court properly admitted evidence of the defendant's blood tests in a criminal trial as a proper foundation was laid by the state for purposes of admission under O.C.G.A. § 40-6-392(a)(1)(A) after the supervisor of the person who ran the blood test reviewed the research and results of the test and testified regarding the procedure and results thereof. *Verlangieri v.*

State, 273 Ga. App. 585, 615 S.E.2d 633 (2005).

Trial court erred in suppressing the defendant's refusal to submit to a state-administered chemical breath test as the implied consent notice given by a sheriff's deputy was substantially accurate and timely given, and irrespective of whether the refusal resulted from the defendant's confusion about the defendant's right to, and insistence on, a blood test, it nevertheless remained a refusal. *State v. Brookbank*, 283 Ga. App. 814, 642 S.E.2d 885 (2007).

Trial court erred in granting the defendant's motion to suppress a breath test slip from an intoxilyzer and all testimony about the intoxilyzer because the state was not required to produce the breath test slip to the defendant ten days before trial as a part of discovery since the breath test slip did not constitute a written scientific report within the meaning of O.C.G.A. § 17-16-23; no test or analysis was performed because the sample was insufficient, and the breath test slip did not show any test results but reflected only a measurement of breath volume. *State v. Tan*, 305 Ga. App. 55, 699 S.E.2d 74 (2010).

Properly-conducted test admissible. — Results of immunoassay test performed on the defendant's blood were admissible after the test was done in accordance with procedures approved by the state crime laboratory as specified by paragraph (a)(1) of O.C.G.A. § 40-6-392. *Jackson v. State*, 198 Ga. App. 261, 401 S.E.2d 289 (1990), cert. denied, 198 Ga. App. 898, 401 S.E.2d 289 (1991).

Blood tests performed on machines acceptable to the Department of Forensic Science yielding results indicating whether an illegal substance was present in the defendant's blood were admissible. *Radcliffe v. State*, 234 Ga. App. 576, 507 S.E.2d 759 (1998).

Trial court did not err in denying the defendant's motion to exclude evidence of breathalyzer test results as the state introduced certificates of the Intoxilyzer machine used to obtain breath tests and the machine's operator testified the machine was working properly at the time the tests were administered, and thus, the state

established the machine was operating at the time the defendant's breathalyzer tests were conducted. *Young v. State*, 275 Ga. 309, 565 S.E.2d 814 (2002).

Due to the defendant's agreement to chemical testing, and subsequent submission to the testing, admission of the state-administered chemical test was proper. *Doyle v. State*, 281 Ga. App. 592, 636 S.E.2d 751 (2006).

Defendant's argument, that the officer advised the defendant that the defendant was under arrest for driving under the influence and not for a violation of O.C.G.A. § 40-6-391(a)(6) and that the defendant never consented to the testing of the defendant's blood for the presence of drugs, failed; nothing in O.C.G.A. § 40-5-55 or O.C.G.A. § 40-6-392 required the officer to tell the defendant that the defendant was under arrest for a drug offense in order for the implied consent to be valid. *Meiklejohn v. State*, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Trial court did not err in denying a defendant's motion to suppress the results of the defendant's horizontal gaze nystagmus (HGN) field sobriety test and of the Intoxilyzer 5000 breath test as the administering officer testified to the officer's experience and training as well as the testing and scoring method used regarding the HGN test, and the defendant's constitutional challenges to the admissibility of the Intoxilyzer 5000 breath test results had already been decided in prior case law precedent adversely to the defendant. *Laseter v. State*, 294 Ga. App. 12, 668 S.E.2d 495 (2008).

Evidence was sufficient for the trial court to find beyond a reasonable doubt that the defendant was guilty of driving an automobile with an unlawful alcohol concentration in violation of O.C.G.A. § 40-6-391(a)(5) because to carry the state's burden to show that the Intoxilyzer machine on which the defendant's breath was tested was operated with all the machine's electronic and operating components attached and in good working order, the state produced certificates of inspections conducted on the machine before and after the test, and the testimony of the operator that the machine was operating properly when the test was con-

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ducted; the machine produced test results showing that the defendant had an alcohol concentration of 0.179 grams. Yearly v. State, 302 Ga. App. 535, 690 S.E.2d 901 (2010).

Court of appeals did not err in reversing an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3). Thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state-administered breath test. Padidham v. State, 291 Ga. 99, 728 S.E.2d 175 (2012).

Admissibility of refusal. — While it is not improper, in light of O.C.G.A. § 40-6-392(d), to instruct a jury that evidence of a defendant's refusal to submit to chemical testing of the defendant's bodily substances is admissible against the defendant, or that the jury could infer the presence of alcohol from the defendant's refusal, Georgia law does not permit a jury to infer from a defendant's refusal of chemical testing that the test would have showed that alcohol impaired the defendant's driving; impaired driving ability depends solely upon an individual's response to alcohol, which varies from person to person, such that the presence of alcohol in a defendant's body, by itself, does not support an inference that the defendant was an impaired driver for purposes of O.C.G.A. § 40-6-391(a)(1). Baird v. State, 260 Ga. App. 661, 580 S.E.2d 650 (2003).

Evidence of the defendant's refusal to submit to voluntary field sobriety tests was admissible, and was not testimonial in nature and thus subject to the Fifth Amendment protection against self-incrimination as a refusal to submit to the tests was not testimonial in nature, and the mere fact that the defendant refused to submit to a blood test was not

subject to the privilege against self-incrimination since no impermissible coercion was involved, regardless of the form of refusal. Ferega v. State, 286 Ga. App. 808, 650 S.E.2d 286 (2007), cert. denied, 129 S. Ct. 195, 172 L.Ed.2d 140 (2008).

Defendant's DUI conviction was upheld on appeal as the evidence of guilt was overwhelming, specifically: smelling strongly of alcohol, having trouble walking and speaking, fumbling with a wallet, a half-empty can of beer in the defendant's truck, hiding the truck's keys and a license in the bathroom, the officer having just seen the defendant driving, despite the defendant's claim to the contrary, and the multiple similar transactions. Caraway v. State, 286 Ga. App. 592, 649 S.E.2d 758 (2007), cert. denied, 2007 Ga. LEXIS 686 (Ga. 2007).

Because the defendant's apparent violation of O.C.G.A. § 40-6-16(a) gave the investigating officer a reasonable and articulable suspicion to stop the defendant and inquire further, the trial court erred in granting the defendant's motion to suppress a refusal to take a breath test in connection with DUI charges; moreover, the trial court erroneously concluded that the defendant could have had an innocent explanation for a last-minute swerve to avoid hitting the officer's patrol car as the issue went to the question of guilt or innocence and was not the dispositive question on a motion to suppress. State v. Rheinlander, 286 Ga. App. 625, 649 S.E.2d 828 (2007).

As a defendant, convicted of driving under the influence, had been read the implied consent rights as soon after the arrest as was warranted under the circumstances, as required by O.C.G.A. § 40-6-392(a)(4), defense counsel was not deficient for not subpoenaing an officer to establish the contrary and thereby prevent admission of evidence that the defendant refused to submit to a breath test. Lynch v. State, 293 Ga. App. 858, 668 S.E.2d 264 (2008).

Trial court properly denied the defendant's motion in limine to exclude evidence that the defendant refused chemical testing based on the testimony of a deputy that while in the defendant's hospital

room, a ticket was written for drunk driving and the defendant was advised of the custodial arrest; thus, there was no error in the trial court's determination that a reasonable person in the defendant's position would not think that they were free to leave at the time the deputy read the implied consent warnings. *Plemmons v. State*, 755 S.E.2d 205, 2014 Ga. App. LEXIS 69 (2014).

Admissibility after initial refusal.

— Trial court was not required to suppress evidence of the defendant's breath test results, although it was clear that the defendant refused to take a breath test when asked at the scene as the defendant rescinded that refusal by agreeing to take the test at the police station. *Stapleton v. State*, 279 Ga. App. 296, 630 S.E.2d 769 (2006).

Test made more than eight hours after arrest not admitted. — Trial court did not err in excluding the defendant's testimony regarding an independent blood test made more than eight hours after the arrest. *Allen v. State*, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

Evidence inadmissible when untimely notice to defendant. — Officer's preference that officer read the implied consent warning in the presence of a witness was not sufficient reason to excuse the officer's failure to give the warning at the time of arrest. *State v. Lamb*, 217 Ga. App. 290, 456 S.E.2d 769 (1995).

Accidents involving serious injuries. — Absent an arrest, a person involved in an accident resulting in serious injuries or fatalities must be informed of the person's implied consent rights within a reasonable amount of time after the accident, as determined by the circumstances, and, when possible, before the administration of any state tests. *Seith v. State*, 225 Ga. App. 684, 484 S.E.2d 690 (1997).

Trial court erred in granting the defendant's motion to suppress results from a blood test performed prior to any arrest as: (1) the evidence showed that the defendant was involved in a car wreck resulting in serious injury before blood was drawn; and (2) a sheriff's deputy had probable cause to suspect that the defendant had been driving under the influence of alco-

hol; moreover, contrary to the defendant's assertion, the fact that a loss of consciousness was temporary did not cause the blood test to fall outside the ambit of O.C.G.A. § 40-5-55(c). *State v. Umbach*, 284 Ga. App. 240, 643 S.E.2d 758 (2007).

Consent implied by taking. — State does not have to show the defendant's actual consent, but only that, after being advised of the defendant's rights pursuant to O.C.G.A. § 40-6-392, the defendant did not refuse to submit to the state-administered test. *Wadsworth v. State*, 209 Ga. App. 333, 433 S.E.2d 419 (1993).

Implied consent warnings were timely when the warnings were given by the officer after the officer attended to matters at the scene that were necessary, including attending to the defendant's injuries and making certain the scene was cleared. *Morrisette v. State*, 229 Ga. App. 420, 494 S.E.2d 8 (1997).

An officer issued a "be on the lookout" (BOLO) after the defendant, who had struck a car and smelled of alcohol, sped off; the officer did not mention that the defendant appeared intoxicated. A second officer who heard the BOLO and detained the defendant at a restaurant did not have probable cause to arrest the defendant; therefore, the fact that the defendant was not read the defendant's implied consent rights until other officers arrived and arrested the defendant did not make the implied consent advisement untimely under O.C.G.A. § 40-6-392(a)(4). *Lynch v. State*, 293 Ga. App. 858, 668 S.E.2d 264 (2008).

Judicial notice of test results. — Trial courts may take judicial notice that Intoximeter 3000 machine test results are based on accepted scientific theory or rest upon the laws of nature; and, when the statutory requirements for admissibility are met, the results may be admitted into evidence without expert testimony regarding the scientific theory behind the operation of the test. *Lattarulo v. State*, 261 Ga. 124, 401 S.E.2d 516 (1991), cert. denied, 502 U.S. 823, 112 S. Ct. 86, 116 L. Ed. 2d 59 (1991); *McClendon v. State*, 201 Ga. App. 262, 410 S.E.2d 760 (1991).

Trial court did not err in admitting the results of a breath test over the

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defendant's objections that the "methods" used to test the defendant were not contained in the Georgia Bureau of Investigation's published administrative regulations. *Rowell v. State*, 229 Ga. App. 397, 494 S.E.2d 5 (1997).

Failure to continuously watch the defendant for 20 consecutive minutes prior to the breath test did not require exclusion of the test results when the evidence shows that the 20-minute rule was substantially complied with and, although an accused can always introduce evidence of the possibility of circumstances that might cause error in the test results, such evidence relates to the weight rather than the admissibility of the test results. *Berkow v. State*, 243 Ga. App. 698, 534 S.E.2d 433 (2000).

Trial court properly refused to suppress evidence of a defendant's chemical breath test; testimony from an officer and proof that a current implied consent card contained the same language as the card used during the defendant's arrest allowed the trial court to conclude that the officer had advised the defendant of the defendant's implied consent rights, and as there was evidence that the breath test machine was working properly at the time of the defendant's breath test, any argument regarding the machine's subsequent removal or repair went to the weight of the results, not their admissibility. *Jones v. State*, 285 Ga. App. 352, 646 S.E.2d 323 (2007), cert. denied, 2007 Ga. LEXIS 758 (Ga. 2007).

Breath test admissible despite delay. — Breath test results were admissible at a trial for a violation of O.C.G.A. § 40-6-391(a)(1) and (a)(5) as the police officer's notification to the defendant of the implied consent rights under O.C.G.A. § 40-6-392(a)(4) was timely in the circumstances; although the defendant was placed in the police car and not given the notification for 18 minutes, the notice was timely because the officer was attending to the passenger and ensuring that the passenger was unharmed and had a safe way to get home and the officer was transporting possession of the vehicle for purposes of impounding the vehicle. *Naik v. State*, 277 Ga. App. 418, 626 S.E.2d 608 (2006).

Admission of first test result when unable to complete second test. —

Fact that a defendant did not have sufficient breath to complete the second of two breath tests did not require suppression of the first test which indicated a blood alcohol level of .146. *Thrasher v. State*, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Although the defendant's attempt at providing a second breath sample failed, as the defendant did not provide sufficient sample and the machine timed out before the defendant provided an adequate sample, it was for the trial court to evaluate the credibility of the witness and determine the reason for the failed second sample. *Smith v. State*, 2013 Ga. App. LEXIS 927 (Nov. 15, 2013).

Breath test admissible despite refusal to permit defendant to consult with counsel. —

Motion filed by a defendant to exclude the results of a breath test under the Georgia Implied Consent Law in the defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391 was properly denied because the defendant was not entitled to the advice of counsel before deciding whether to submit to the test; the right to counsel under U.S. Const., amend. 6 and Ga. Const. 1983, Art. I, Sec. I, Para. XIV did not come into play until the proceedings had reached a critical stage, and the breath test was not such a stage because it did not signal the beginning of a formal adversary hearing and because a lawyer could add little to the warnings required from the officer administering the test by O.C.G.A. § 40-6-392(a)(4). *Rackoff v. State*, 281 Ga. 306, 637 S.E.2d 706 (2006).

Suppressed breath test results remained admissible for impeachment purposes. —

Despite an order suppressing the defendant's breath test results, the results remained admissible for impeachment purposes once the defendant testified that the limited alcohol consumed did not affect or impair an ability to drive. Moreover, absent bad faith or an order requiring production, the state did not fail to fully disclose all information regarding the defendant's breath test. *Rosandich v. State*, 289 Ga. App. 170, 657 S.E.2d 255 (2008), cert. denied, 2008 Ga. LEXIS 380 (Ga. 2008).

Artistic tendencies as justification for juror striking. — Trial court did not err in denying the defendant's Batson challenge regarding the state's peremptory strike of an African-American juror who was a dance instructor as the prosecutor explained that the prosecutor struck the juror because people in artistic professions had "a different slant," discriminatory intent was not inherent in this race-neutral explanation, and the juror was not similarly situated to other jurors who were not stricken. *White v. State*, 258 Ga. App. 546, 574 S.E.2d 629 (2002).

Admissibility of an alco-sensor test result is not governed by O.C.G.A. § 40-6-392. *Simms v. State*, 223 Ga. App. 330, 477 S.E.2d 628 (1996).

Even though the admissibility of alcosensor results is not governed by O.C.G.A. § 40-6-392 when the results are not used as evidence of the amount of alcohol in a person's blood, when the testimony is that the alcosensor showed evidence of alcohol on the defendant's breath, the officer must testify that the officer used a device of approved design. *Knapp v. State*, 229 Ga. App. 175, 493 S.E.2d 583 (1997).

Argument that the results of an alco-sensor test were inadmissible because the defendant submitted to the test at the request of the defendant's wife, and not the officer's request, were meritless because O.C.G.A. §§ 40-5-55 and 40-6-392(a)(4) did not apply to the administration of the alco-sensor test. *Hernandez v. State*, 297 Ga. App. 177, 676 S.E.2d 795 (2009).

Trial court did not err in admitting the results of the defendant's portable alco-sensor test because even though the defendant was in custody for purposes of *Miranda*, the portable test was administered in response to a demand from the defendant, not the officer; thus, the situation was more akin to a spontaneous outburst from an unwarned suspect or a test conducted pursuant to the Georgia Implied Consent Statute, O.C.G.A. § 40-6-392. *Hale v. State*, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

Intoximeter test results properly admitted. — When the defendant asserted as error the denial of the defen-

dant's motion to exclude the results of two intoximeter tests performed after the defendant was arrested, arguing that the results of the tests should have been suppressed because the arresting officer discouraged the defendant from taking a blood test after the defendant had elected to do so and forced the defendant to accept the state's choice as to the type of independent test administered, there was no error, since the trial court concluded that by the defendant's own testimony, the defendant stated that the defendant decided that the defendant's best alternative was to take the breath test. *Hattaway v. State*, 191 Ga. App. 812, 383 S.E.2d 140, cert. denied, 191 Ga. App. 922, 383 S.E.2d 140 (1989).

Computer generated analysis of breath, made admissible pursuant to O.C.G.A. § 40-6-392(a) upon showing a proper foundation, was properly admitted into evidence. The analysis, referred to by that section, was "created" by the machine and not by the trooper who was trained in the use of the machine and the administration of the test. *Walters v. State*, 195 Ga. App. 434, 394 S.E.2d 105 (1990).

It was not error to admit into evidence an intoximeter printout and allow the jury to see the printout, over the defendant's objection that the printout was cumulative of the officer's testimony. *Walters v. State*, 195 Ga. App. 434, 394 S.E.2d 105 (1990).

When the machine used to test the defendant's breath was an approved type, the officer who administered the test was trained and certified to operate the machine, the machine was operating properly when the defendant's breath was tested, and the defendant was informed of the defendant's implied consent rights before being tested, the evidence established that the defendant's breath was tested in accordance with the specific guidelines of O.C.G.A. § 40-6-392. *Eppinger v. State*, 198 Ga. App. 889, 403 S.E.2d 829, cert. denied, 198 Ga. App. 897, 403 S.E.2d 829 (1991).

O.C.G.A. § 40-6-392 was satisfied when the officer who administered the tests was authorized by the State of Georgia to perform chemical analyses utilizing the Intoximeter Breath Analyzer 3000 ma-

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chine and the officer's certification permit was admitted into evidence without objection. *Stinson v. State*, 203 Ga. App. 225, 416 S.E.2d 765, cert. denied, 203 Ga. App. 908, 416 S.E.2d 765 (1992).

Probate court did not err by admitting an intoximeter test result despite a delay in advising the defendant of the defendant's implied consent rights when the police officer's intervening emergency call required that another certified operator be located to administer the test, and the conservation ranger's truck was not suited for carrying uncooperative passengers safely, thus requiring the officer to concentrate the officer's efforts on placing defendant in custody and safely and effectively transporting the defendant, rather than on advising the defendant of the defendant's rights. Given these exigencies and the fact that evidence showed that the defendant had earlier been belligerent, angry, and uncooperative, advising the defendant of the defendant's implied consent rights would have been of no conceivable benefit. *Smith v. State*, 204 Ga. App. 576, 420 S.E.2d 29, cert. denied, 204 Ga. App. 922, 420 S.E.2d 29 (1992).

Officers' testimony that blood alcohol breath test machines were functioning properly, had been inspected, that no pieces or components were missing, that the officers performed all required tests, and that the officers prepared the instruments in accordance with the officers' training showed substantial compliance with the required procedures, and admission of the test results was proper; the defendants' arguments that the breath test results should have been inadmissible because the machines registered increasing blood alcohol concentration readings as a person continued to blow into the machines went to the weight of the evidence, which was for the trial court to determine. *Whittaker v. State*, 279 Ga. App. 148, 630 S.E.2d 560 (2006).

Trial court did not err in denying suppression of the results of the defendant's Intoxilyzer 5000 and other field sobriety tests administered upon a defendant's arrest for driving with an unlawful alcohol concentration and driving under the influ-

ence of alcohol in violation of O.C.G.A. § 40-6-391 as: (1) the arguments the defendant raised about the officer's ability to manipulate the Intoxilyzer 5000 test went to the weight, and not admissibility of the evidence; (2) the officer was sufficiently trained to administer the tests; (3) the state showed substantial compliance with the required procedures; and (4) no due process violation resulted from the evidence being admitted. *Stewart v. State*, 280 Ga. App. 366, 634 S.E.2d 141 (2006).

Willful performance implied consent. — When the evidence showed that the defendant was properly informed of the defendant's rights under the implied consent law and went on to take the test, the defendant obviously did not refuse to submit to the test, and the state had no further burden of showing the defendant's consent thereafter. *Wadsworth v. State*, 209 Ga. App. 333, 433 S.E.2d 419 (1993).

No requirement that certificate be introduced. — To prove that a blood alcohol test is valid, there is no requirement that a "certificate" of any kind must be introduced at trial; the state sufficiently complied with the state's burden of proof by competent circumstantial evidence that the test was performed according to approved methods, on a machine in good working order, and by an individual possessing a valid permit. *Bazemore v. State*, 225 Ga. App. 741, 484 S.E.2d 673 (1997).

Oral testimony of an intoximeter machine operator was properly admitted as original evidence when there was no contention either that the witness had not been qualified to operate the machine or that the operator had failed to perform the test in accordance with methods approved by the Division of Forensic Services of the Georgia Bureau of Investigation. *Valdez v. State*, 192 Ga. App. 10, 383 S.E.2d 611 (1989).

Proof of qualifications of person conducting test. — When the only evidence offered by the state as to the qualifications of the person who withdrew the defendant's blood was inadmissible hearsay having no probative value, the state failed to present any competent evidence showing that the mandatory requirements of O.C.G.A. § 40-6-392(a)(2) had

been met; breach of the requirement rendered evidence of the blood test offered by the state inadmissible to establish a presumption that the alleged drunken driver was driving under the influence. *Harden v. State*, 210 Ga. App. 673, 436 S.E.2d 756 (1993).

Testimony of a state trooper that a nurse withdrew the blood was not competent evidence to prove compliance with the "qualified person" requirement. *Carr v. State*, 222 Ga. App. 776, 476 S.E.2d 75 (1996).

Testimony of the arresting officer that the officer knew the hospital employee who drew the defendant's blood and that the employee had drawn blood for the officer several times was not sufficient to show that the employee was qualified within the meaning of O.C.G.A. § 40-6-392. *Brahm v. State*, 230 Ga. App. 407, 497 S.E.2d 240 (1998).

Admission of a copy of a document certifying that the inspector of the Intoxilyzer 5000 was authorized to perform inspections was not reversible error. *Kollman v. State*, 231 Ga. App. 630, 498 S.E.2d 745 (1998).

Proof of the qualifications of the person who drew the defendant's blood was properly established through hospital business records and the testimony of a supervisor. *Dean v. State*, 232 Ga. App. 390, 501 S.E.2d 895 (1998).

Only acceptable methods of proving the qualification of the person who drew a defendant's blood are the certificate provided for in O.C.G.A. § 40-6-392(e), introduced by means of the business records exception to the hearsay rule, and the testimony of the person who drew the blood. *Peek v. State*, 272 Ga. 169, 527 S.E.2d 552 (2000).

State properly laid a foundation for the admission of Intoxilyzer 5000 test results by the administering officer testifying that the officer was trained to operate the Intoxilyzer 5000 and that the officer had a permit from the Division of Forensic Sciences (DFS) to operate it, and by the permit, which was entered into evidence, showing that the officer was certified by the DFS to perform chemical analyses of breath specimens pursuant to the Uniform Act Regulating Traffic on Highways

and the authorization was applicable to analyses utilizing an Intoxilyzer Model 5000. *Garland v. State*, 256 Ga. App. 313, 568 S.E.2d 540 (2002).

Operator's opinion about performance of test not required evidence.

— It is sufficient for a breathalyzer operator to testify to the facts upon which a trial court can base a conclusion that a chemical test complied with O.C.G.A. § 40-6-392(a)(1)(A). It is not necessary that the operator additionally testifies to the operator's opinion that the test was performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation. *State v. Naik*, 259 Ga. App. 603, 577 S.E.2d 812 (2003).

Testimony of forensic toxicologist properly admitted.

— In a prosecution for driving under the influence, testimony of the forensic toxicologist who tested the defendant's blood was properly admitted as expert testimony as the witness had a permit from the Georgia Bureau of Investigation to perform chemical analyses of blood specimens received from the police, and the defendant subsequently had the opportunity to cross-examine the witness about the witness's credentials and testimony. *Fowler v. State*, 294 Ga. App. 864, 670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

Periodic testing of intoximeter machine.

— When the state periodically tested the intoximeter machine and a log was kept in the sheriff's office, such tests being required to be made periodically, the intoximeter results were properly admitted. *Walters v. State*, 195 Ga. App. 434, 394 S.E.2d 105 (1990).

Although a breath machine was taken out of service after the defendant's test,

the state submitted circumstantial evidence in accordance with O.C.G.A. § 40-6-392(f) that the machine was in good working order during the test; therefore, the trial court erred in granting the defendant's motion to suppress. *State v. Rackoff*, 264 Ga. App. 506, 591 S.E.2d 379 (2003).

Attachment of test cards to inspection certificates was not required for admissibility of breath test results. *Yount*

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v. State, 249 Ga. App. 563, 548 S.E.2d 674 (2001).

Certificates lacked sufficient indicia of reliability. — Certificates showing that a breath test machine was properly functioning both prior to and following the defendant's test were improperly admitted without proof of sufficient indicia of reliability. *Daniel v. State*, 227 Ga. App. 92, 488 S.E.2d 129 (1997).

Certification of certificates of inspection not required. — O.C.G.A. § 40-6-392(f) does not require that copies of certificates of inspection must be certified to be admissible. *Andries v. State*, 236 Ga. App. 842, 512 S.E.2d 685 (1999).

Certificate of inspection for a breath-testing instrument was admissible even though the certificate was not prepared until eight months after the inspection. *Williams v. State*, 224 Ga. App. 368, 481 S.E.2d 535 (1997).

As a certificate of inspection of a breath test machine, pursuant to O.C.G.A. § 40-6-392(f), was deemed simply a record made in the regular course of business, the certificate was not "testimonial" hearsay under *Crawford v. Washington*, 541 U.S. 36 (2004), and the defendant's confrontation rights under the Sixth Amendment were not violated when the certificate was offered into evidence in a driving under the influence trial. *Rackoff v. State*, 275 Ga. App. 737, 621 S.E.2d 841 (2005).

Inspection certificates admissible under Melendez-Diaz. — Testing certificates for a breath-testing machine were properly admitted into evidence in a defendant's trial for driving under the influence (less safe and per se) under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803) and O.C.G.A. § 40-6-392(f). The documents did not come within the *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009) because the documents are not generated for the prosecution of a particular defendant. *Ritter v. State*, 306 Ga. App. 689, 703 S.E.2d 8 (2010).

Photocopies of certificates. — Admission of photocopies of certificates of inspection was not an abuse of discretion

when the originals were accounted for. *Chastain v. State*, 231 Ga. App. 225, 498 S.E.2d 792 (1998).

Uncertified photocopies of a certificate of inspection for an Intoxilyzer 5000 were admissible after a police officer testified at trial that the officer personally made the photocopies of the original certificates. *Wright v. State*, 238 Ga. App. 442, 519 S.E.2d 461 (1999).

Delay in certificate affects weight. — Inspector's delay in signing a certificate of inspection of a breath test machine went to the certificate's weight rather than the certificate's admissibility. *Tam v. State*, 225 Ga. App. 101, 483 S.E.2d 142 (1997).

Inspection certificates erroneously admitted. — When the state laid no foundation for inspection certificates other than testimony describing the certificates and showing that the certificates were "maintained in the log book" for the breath machine, the test results were erroneously admitted. *Hamilton v. State*, 228 Ga. App. 285, 491 S.E.2d 485 (1997).

Foundation requirements may be met by other than certificate. — Certificate of inspection is not the sole method of meeting the foundational requirements for admitting into evidence the results of a breath alcohol test. *Banks v. State*, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Showing that machine in working order required. — Results of the defendant's breath test were erroneously admitted after the state failed to establish that the state's Intoximeter 3000 machine had all the machine's electronic and operating components attached and in working order. *Raulerson v. State*, 223 Ga. App. 556, 479 S.E.2d 386 (1996).

Testimony of the individual who conducted breath tests sufficiently proved by circumstantial evidence that the tests were performed on a machine operated with all the machine's electronic and operating components prescribed by the machine's manufacturer properly attached and in good working order. *Gidey v. State*, 228 Ga. App. 250, 491 S.E.2d 406 (1997); *Diaz v. State*, 245 Ga. App. 380, 537 S.E.2d 784 (2000).

Certification and inspection of a machine need not occur on the same day as

the testing. *Rowell v. State*, 229 Ga. App. 397, 494 S.E.2d 5 (1997).

Defendant charged with driving with an unlawful alcohol concentration may always introduce evidence of the possibility of error or circumstances that might have caused the machine to malfunction; such evidence would relate to the weight rather than the admissibility of breathalyzer results. *Banks v. State*, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Defendant is entitled to attack the results of a blood alcohol test by attempting to show the machine was not in good working order and thus not operating properly when the defendant was tested. *Banks v. State*, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Evidence of a refusal to submit to a blood-alcohol test is admissible because the refusal is relevant to the question of guilt or innocence. *Wessels v. State*, 169 Ga. App. 246, 312 S.E.2d 361 (1983) (decided prior to 1983 amendment adding subsection (c)).

Defendant's refusal to take a blood alcohol test is relevant and admissible. *Rawl v. State*, 192 Ga. App. 57, 383 S.E.2d 903 (1989).

Defendant who was acquitted of driving under the influence of drugs, and as to whom the court directed a verdict of "not guilty" of driving under the influence of alcohol, could nonetheless be found guilty of driving under the combined influence of drugs and alcohol, arising from the same incident, since the arresting officer testified that the defendant refused to submit to a chemical test of the defendant's blood, the defendant had glassy and bloodshot eyes, and that the defendant tested positive for alcohol on the alco-sensor and for drugs using two field sobriety eye tests. *Mendoza v. State*, 196 Ga. App. 627, 396 S.E.2d 576 (1990).

Person is required to submit to a test to determine if the person is under the influence of alcohol or other drugs; however, a driver has the right to refuse to take a state administered test, subject to the mandate that exercise of the right of refusal shall be admissible in the driver's criminal trial. *State v. Leviner*, 213 Ga. App. 99, 443 S.E.2d 688 (1994).

Failure to provide adequate sample considered refusal. — Defendant's fail-

ure to provide an adequate breath sample was properly considered a refusal, and the instructions given by the trial court regarding the evidentiary ramifications of such a refusal were both proper and warranted since the defendant did not blow hard enough in the machine to register a result on either of two tries and the officer who arrested the defendant testified that the officer believed that the defendant was too intoxicated to give an adequate sample. *Komala v. State*, 237 Ga. App. 236, 515 S.E.2d 185 (1999).

Determination of unwilling, not unable, to provide sample. — When the arresting officer testified that the defendant pretended to, but did not, blow into a breath-alcohol testing machine, which had been tested and was certified as working properly, and the defendant testified as to why the defendant was unable to provide an adequate breath sample, the trial court was authorized to believe the officer's testimony that the defendant was unwilling, not unable, to give a sample sufficient to determine the defendant's blood alcohol concentration. *Walker v. State*, 262 Ga. App. 872, 586 S.E.2d 757 (2003).

Evidence of refusal to take test held not admissible. — Officer's statement to the defendant: "After submitting to the required testing, you are entitled to additional chemical tests at your own expense" did not properly advise the defendant of the defendant's rights, and evidence of the defendant's refusal to submit to a state administered test was inadmissible at trial. *Moore v. State*, 217 Ga. App. 536, 458 S.E.2d 479 (1995).

Evidence of refusal to have additional test. — Prosecutor's argument regarding the defendant's failure to take an additional blood alcohol level test did not create an impermissible inference because had the defendant refused to submit to any chemical test, that refusal would have been admissible at trial under subsection (d) of O.C.G.A. § 40-6-392 as positive evidence creating an inference that such a test, if performed, would have shown the presence of alcohol in the defendant's blood. *Dupont v. State*, 204 Ga. App. 262, 418 S.E.2d 803 (1992).

Two sequential breath test results were properly allowed into evidence.

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Horne v. State, 237 Ga. App. 844, 517 S.E.2d 74 (1999).

Because an intervening failed breath test, due to the defendant's inability to provide an adequate sample, did not render otherwise valid breath alcohol test results inadmissible, and given that the fact of an intervening failed breath test went to the weight, not the admissibility, of the test results, suppression of the results was properly denied; moreover, the appeals court declined to hold that the word "sequential," also meant without any gaps in the procedure due to the test taker's inability to give an adequate breath sample. Davis v. State, 286 Ga. App. 443, 649 S.E.2d 568 (2007).

Admission of two results even if one lower. — Trial court erred in ruling that a printout in the defendant's case be redacted to reflect or show the first, lower breath test result only on the ground that Georgia law only allowed the lower of two sequential breath test samples to be used to prosecute the defendant's DUI case as O.C.G.A. § 40-6-392(a)(1)(B) clearly contemplated the admission of both sequential test results even though the statute specified that the lower of the two numbers was to be the determinative number for certain purposes. State v. Kruzel, 261 Ga. App. 90, 581 S.E.2d 711 (2003).

State was without authority to conduct a third breath test on the defendant and the trial court should have granted the defendant's motion to exclude the results of a third test. Davis v. State, 237 Ga. App. 817, 517 S.E.2d 87 (1999).

Evidence of refusal admissible without showing implied consent warnings given. — It was not error to deny the defendant's motion to suppress testimony that the defendant refused to take a breath test although there was no affirmative showing by the state that implied consent warnings were given. Wyatt v. State, 179 Ga. App. 327, 346 S.E.2d 387 (1986).

When the defendant failed to show a medical or physical explanation why the defendant was unable to take and complete a breath test, it was not error to admit evidence of such nonverbal

refusal. Allen v. State, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

Attacking the admissibility of properly-conducted breathalyzer test. — Admissibility of breathalyzer test results is controlled solely by O.C.G.A. § 40-6-392 so that, as long as a test has been conducted in compliance with the statute, a defendant is precluded from attacking the admissibility of the test based on a challenge to the scientific reliability of the result. Brannan v. State, 261 Ga. 128, 401 S.E.2d 269 (1991).

Failure to abide by statute renders test inadmissible. — In the absence of the advice of rights under O.C.G.A. § 40-6-392, the intoximeter test results administered by the arresting officer are inadmissible. Nelson v. State, 135 Ga. App. 212, 217 S.E.2d 450 (1975); Holcomb v. State, 217 Ga. App. 482, 458 S.E.2d 159 (1995).

Results of a breath test for alcohol content are rendered inadmissible by the failure to advise the defendant, both at the time of the defendant's arrest and at any time subsequent thereto, of defendant's right to the three types of chemical tests set forth in the Uniform Rules of the Road, viz., blood, urine, and breath. Hulsey v. State, 138 Ga. App. 221, 225 S.E.2d 752 (1976).

Substantial compliance with the provision as to additional blood-alcohol-level tests does not compensate for the total failure to advise the defendant at any time of the defendant's right to a urine analysis. Hulsey v. State, 138 Ga. App. 221, 225 S.E.2d 752 (1976).

Language of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392) makes it clear that a person must be advised of the person's right to have an additional test administered by a qualified person of the person's own choice in addition to the one administered by the arresting officer. The failure to so inform invalidates the result of any test and also justifies the refusal to submit to a test. Garrett v. Department of Pub. Safety, 237 Ga. 413, 228 S.E.2d 812 (1976).

It is reversible error to admit evidence regarding the result of a breath test when the defendant was informed of the defendant's right to have either a blood or

breath test, but was not advised of the defendant's additional right under Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392). *Torley v. State*, 141 Ga. App. 366, 233 S.E.2d 476 (1977).

Results of an intoximeter (breath) test which is taken in violation of the protections afforded by Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392) may not be used in evidence against the defendant. *State v. Johnston*, 160 Ga. App. 71, 286 S.E.2d 47 (1981), *aff'd*, 249 Ga. 413, 291 S.E.2d 543 (1982).

Failure of an arresting officer to advise a suspect of the suspect's rights to a chemical test or tests according to paragraph (a)(3) of O.C.G.A. § 40-6-392 renders the results of the test inadmissible in later proceedings. *Rogers v. State*, 163 Ga. App. 641, 295 S.E.2d 140 (1982).

When a person is not advised, at the time of arrest, or at a time as close in proximity to the instant of arrest as the circumstances of the individual case might warrant, of the person's right to an independent chemical analysis to determine blood-alcohol or drug contents, the results of a state-administered test will not be admissible at trial to show that the accused was driving under the influence of alcohol or drugs. *Perano v. State*, 250 Ga. 704, 300 S.E.2d 668 (1983); *State v. McCard*, 173 Ga. App. 504, 326 S.E.2d 856 (1985).

Admission of the results from a blood-alcohol test in prosecution for homicide by vehicle was reversible error when the defendant was undeniably conscious and communicating with those present at the hospital where the defendant was taken to be treated after the accident, and the police officer did not follow the statutory obligation of informing the defendant of the right to refuse to take the test or the defendant's right to an independent chemical analysis. *Carswell v. State*, 171 Ga. App. 455, 320 S.E.2d 249 (1984), overruled on other grounds, *Adcock v. State*, 260 Ga. 302, 392 S.E.2d 886 (1990).

Conviction of driving under the influence of alcohol was reversed when the court erred in allowing into evidence a police officer's testimony that the appellant "failed" a roadside sobriety test administered to the appellant without the

required foundation for such evidence. *Channell v. State*, 172 Ga. App. 156, 322 S.E.2d 356 (1984).

After the defendant made arrangements for an additional chemical analysis of the defendant's blood but was prevented from accomplishing this by the arresting officer acting under what the officer believed to be the predetermined policy of the police department and medical center which created barriers and denied the defendant the opportunity to obtain a test of the defendant's own choosing, the trial court erred in admitting the results of the intoximeter test. *Gordon v. State*, 190 Ga. App. 55, 378 S.E.2d 362 (1989).

Admission of the defendant's blood test results was harmful error when, although the card from which the arresting officer read the defendant the implied consent warning included a statement regarding the right to an independent test, the record was devoid of evidence that the defendant was offered an opportunity to schedule a second test. *Norfleet v. State*, 196 Ga. App. 548, 396 S.E.2d 237 (1990).

Warning that completely failed to inform a driver that the driver could choose the driver's own qualified person to administer the additional test made the intoximeter test administered by the state inadmissible. *State v. Harrison*, 216 Ga. App. 325, 453 S.E.2d 820 (1995).

Failure to advise the defendant of the right to an independent, additional blood alcohol test prevented the state from introducing the results of an additional, but not independent, blood test requested by the defendant as a result of the deficient warning. *Jones v. State*, 218 Ga. App. 675, 462 S.E.2d 804 (1995).

In a driving under the influence charge, the state's failure to provide the defendant a blood test after the defendant provided a breath sample on a state-administered breath test was a violation of O.C.G.A. § 40-6-392 and precluded the state from introducing evidence regarding its test. *State v. Schmidt*, 256 Ga. App. 749, 569 S.E.2d 630 (2002).

Trial court erred in denying the defendant's motion to suppress the results of the defendant's intoximeter test after the arresting officer failed to provide an inde-

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pendent blood test under O.C.G.A. § 40-6-392(a)(3), failed to use reasonable efforts to ensure that the defendant's blood was both drawn and tested, and the officer did not suggest any other testing alternatives, such as calling the defendant's personal physician or the defendant's lawyer, or submitting the sample to the state's crime lab; once the defendant invoked the right to an independent test, the officer had a duty to make reasonable efforts to accommodate the independent test. *Cole v. State*, 263 Ga. App. 222, 587 S.E.2d 314 (2003).

After a defendant was arrested for driving under the influence and asked for an independent test pursuant to O.C.G.A. § 40-6-392(a)(3), and the police deputy brought the defendant to a hospital where the deputy knew that the defendant could only have blood drawn at that hour but not tested, the deputy did not reasonably accommodate the defendant's request; accordingly, the trial court erred in failing to suppress the results of the test conducted by the deputy. *Koontz v. State*, 274 Ga. App. 248, 617 S.E.2d 207 (2005).

An arresting officer did not make a reasonable effort to accommodate a defendant's request for an independent blood test by qualified personnel of the defendant's own choosing, as required under O.C.G.A. §§ 40-5-67.1(b)(2) and 40-6-392(a)(3), because the officer unilaterally chose the location for the independent test. *State v. Metzger*, 303 Ga. App. 17, 692 S.E.2d 687 (2010).

Test results suppressed when state failed to provide requested discovery regarding machine. — Trial court did not err in granting a DUI defendant's motion to suppress evidence of a state-administered breath test based on the state's failure, in disobedience of a discovery order granted by the trial court, to provide the defendant with information regarding the machine and the machine's training materials pursuant to O.C.G.A. § 40-6-392(a)(4). *State v. Smiley*, 301 Ga. App. 778, 689 S.E.2d 94 (2009).

Test admissible although computer source code for Intoxilyzer not produced. — In a DUI case, the State was

not required to disclose the computer source code for the Intoxilyzer 5000 used to measure defendant's blood alcohol under O.C.G.A. § 40-6-392(a)(4) because the State did not have access to the source code from the Intoxilyzer's Kentucky manufacturer and had not attempted to gain access to the code. *Smith v. State*, 325 Ga. App. 405, 750 S.E.2d 758 (2013).

Improper procedure used to persuade defendant to rescind initial refusal made results inadmissible. — Suppression of the defendant's breath test was proper because the trial court found that the procedure used by the deputy to persuade the defendant to rescind an initial refusal-telling the defendant that the defendant could go home to the defendant's son if the defendant blew under the legal limit-was not fair or reasonable; the ruling depended on the credibility of the witnesses and the trial court correctly applied the law. *State v. Rowell*, 299 Ga. App. 238, 682 S.E.2d 343 (2009).

Blood and urine test results held inadmissible. — Because the evidence sufficiently showed that the defendant's mental condition was clearly vulnerable, and that the defendant: (1) could not read; (2) had to be forcibly restrained while the consent form was initially being read; (3) was weeping while the remainder of the form was read; and (4) never actually signed the consent form, the trial court properly found that any consent to submit to blood and urine tests was not freely and voluntarily given. Moreover, the proper standard of review on appeal, based on the fact that credibility was an issue, was not a de novo standard, but a clearly erroneous standard. *State v. Stephens*, 289 Ga. App. 167, 657 S.E.2d 18 (2008).

Error in the admission, over the defendant's timely objection, of the results of a state-administered test was harmless when the evidence of the defendant's blood alcohol level merely corroborated other evidence including defendant's own statements that the defendant had been drinking heavily. *Mooney v. State*, 221 Ga. App. 420, 471 S.E.2d 904 (1996).

Consent obtained by misleading information. — Police officer's warning to anonresident defendant that "Under O.C.G.A. §§ 40-5-55 and 40-5-153, you

will lose your privilege to operate a motor vehicle from six to twelve months should you refuse to submit to the designated State administered chemical test" omitted the crucial fact that refusal to take the test would affect the defendant's ability to drive "on the highways of this state." Thus, the defendant was deprived of making an informed choice, and the test results were inadmissible; overruling, *Anthony v. State*, 211 Ga. App. 622, 441 S.E.2d 70 (1993) and *State v. Reich*, 210 Ga. App. 407, 436 S.E.2d 703 (1993). *State v. Coleman*, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

When a nonresident defendant's consent to a chemical breath test was based at least in part on an officer's statement that the defendant's refusal to take the test would result in a six-month suspension of the defendant's out-of-state driver's license, a penalty which the state was unauthorized to carry out, the defendant was deprived of making an informed choice under the implied consent law, and the test results were inadmissible. *Deckard v. State*, 210 Ga. App. 421, 436 S.E.2d 536 (1993).

In a prosecution for driving under the influence, when the defendant was deprived by the totality of the inaccurate, misleading, and/or inapplicable information given to the defendant by the arresting officer of making an informed choice under the implied consent statute, the defendant's refusal to consent to a urine test was rendered inadmissible. *State v. Leviner*, 213 Ga. App. 99, 443 S.E.2d 688 (1994).

Miranda warnings not required. — State administered breath test does not require Miranda warnings. *State v. Lord*, 236 Ga. App. 868, 513 S.E.2d 25 (1999).

Admissibility of blood test when defendant unconscious. — Results of a blood test administered to the defendant while the defendant was unconscious were admissible. *Thornberry v. State*, 146 Ga. App. 827, 247 S.E.2d 495 (1978).

Even if the defendant was unconscious or semi-conscious, and thereby incapable of refusing to consent to a blood test, the results of the test were nevertheless admissible. *Holmes v. State*, 180 Ga. App. 787, 350 S.E.2d 497 (1986).

Hospital business records. — Trial court properly admitted the results of a blood test performed by a hospital as a business record pursuant to former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803), at the defendant's trial for vehicular homicide, when the test was administered for the purpose of assisting in the defendant's medical treatment, was requested by the treating physician, not a law enforcement officer, and was not obtained for the purpose of showing that the defendant was in violation of the driving-under-the-influence statute. *Jackson v. State*, 196 Ga. App. 724, 397 S.E.2d 13 (1990).

It is not necessary that a blood alcohol test administered by a hospital in providing medical treatment be performed in compliance with the procedures of subsection (a) of O.C.G.A. § 40-6-392 in order to be considered a valid test for purposes of the inferences permitted under subsection (b) of that section. *Dixon v. State*, 227 Ga. App. 533, 489 S.E.2d 532 (1997).

Medical records certified by the records custodian of a hospital showing the results of an independent chemical test requested by the defendant were not admissible without further foundational evidence that would satisfy the requirements of the business records exception to the hearsay rule. *Brahm v. State*, 230 Ga. App. 407, 497 S.E.2d 240 (1998).

While the Supreme Court had held that the only acceptable methods of proving the qualification of the person who drew a defendant's blood was the certificate provided for in O.C.G.A. § 40-6-392(e), introduced by means of the business records exception to the hearsay rule and the testimony of the person who drew the blood, that did not prevent the same certificate from being admitted under other appropriate, hearsay exceptions, such as the public records exception. *Bess v. State*, 254 Ga. App. 80, 561 S.E.2d 209 (2002).

Alternative methods of challenging improperly obtained results. — Results of an intoximeter test, if improperly obtained, are subject to a motion to suppress, or alternatively, subject to objection at the time the evidence is offered as this is consistent with the statutory mandate that the use of such tests in criminal trials

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shall be subject to the strictest protections and within the parameters of O.C.G.A. § 17-5-30. *State v. Johnston*, 160 Ga. App. 71, 286 S.E.2d 47 (1981), *aff'd*, 249 Ga. 413, 291 S.E.2d 543 (1982).

When the defendant previously has not moved to suppress evidence, the results of defectively administered test are inadmissible over objection. *State v. Johnston*, 160 Ga. App. 71, 286 S.E.2d 47 (1981), *aff'd*, 249 Ga. 413, 291 S.E.2d 543 (1982).

Motion in limine. — In a DUI case, the state's failure to offer evidence at a pre-trial hearing that the defendant had been informed of the defendant's statutory rights to additional chemical tests did not involve a constitutional issue and thus did not subject the test results to a motion to suppress; rather, a motion in limine was the proper device for obtaining a pre-trial ruling. *Pierce v. State*, 173 Ga. App. 551, 327 S.E.2d 531 (1985).

Motion alleging noncompliance with either O.C.G.A. § 40-6-392 or administrative regulations concerning the administration of a blood test may be raised only by way of a motion in limine. *Sapp v. State*, 184 Ga. App. 527, 362 S.E.2d 406 (1987).

Unlike a pre-trial motion in limine, the filing of a pre-trial motion to suppress, based on, for example, lack of probable cause for arrest, mandates that an evidentiary hearing "shall" be held outside the presence of the jury before the contested tangible evidence is admitted at trial. *Sapp v. State*, 184 Ga. App. 527, 362 S.E.2d 406 (1987).

Trial court properly denied the defendant's motion in limine, admitting an Intoxilyzer 5000's certificate of inspection as non-testimonial, as well as the defendant's breath test results; even if error was presented, it was harmless since the defendant was acquitted of driving under the influence with an unlawful blood alcohol concentration. Moreover, the incident report was properly admitted under the rule of completeness as the trial court was authorized to find that it was necessary for the state to admit all relevant parts of the incident report in evidence to show that the omissions noted by the defendant

were not so material as to have effected the accuracy of the report. *Phillips v. State*, 289 Ga. App. 281, 656 S.E.2d 905 (2008).

Defendant's motion in limine claiming that an intoxilyzer's seizure of the defendant's breath samples was unlawful because the intoxilyzer's electronic components and operating parts were not properly attached and in good working order as required by O.C.G.A. § 40-6-392 was subject to the requirements of O.C.G.A. § 17-5-30, relating to motions to suppress. *State v. Carter*, 292 Ga. App. 322, 665 S.E.2d 14 (2008).

Foundation requirements for the admissibility of chemical test results do not have to be proved in front of the jury. *Gaston v. State*, 227 Ga. App. 666, 490 S.E.2d 198 (1997).

Defendant was properly not allowed to question an intoximeter operator outside the presence of the jury in order to show that the operator was not able to lay a foundation for the admissibility of the test results. *Daniel v. State*, 231 Ga. App. 125, 497 S.E.2d 656 (1998).

Foundation requirement satisfied. — Proper foundation showing that testing officer met all the requirements of paragraph (a)(1) of O.C.G.A. § 40-6-392 with regard to blood-alcohol tests was laid when an officer testified that the officer was trained and experienced, that the test was performed according to approved methods, and that the officer had a permit to operate the machine. *Riley v. State*, 175 Ga. App. 810, 334 S.E.2d 863 (1985); *Broski v. State*, 196 Ga. App. 116, 395 S.E.2d 317 (1990); *Page v. State*, 202 Ga. App. 828, 415 S.E.2d 487, *cert. denied*, 202 Ga. App. 907, 415 S.E.2d 487 (1992).

Police officer's testimony that the officer observed the defendant continuously from defendant's arrest until the time of testing was sufficient to satisfy any foundation requirement as to the admission of the test results. *Lee v. State*, 188 Ga. App. 912, 373 S.E.2d 28, *cert. denied*, 188 Ga. App. 912, 373 S.E.2d 28 (1988).

Proper foundation was laid when the officer who performed the test testified that the officer was certified to operate the machine and that the officer conducted the customary pretest procedures before

administering the test, and there was also testimony that the machine, an Intoximeter 3000, was periodically serviced. *Harris v. State*, 199 Ga. App. 457, 405 S.E.2d 501 (1991).

Proper foundation for admission of test results was laid when, although the state was unable to produce the police officer who administered the test, the arresting officer testified that the officer was personally present and witnessed the administration of the test. *Mullis v. State*, 201 Ga. App. 75, 410 S.E.2d 182 (1991).

Proper foundation was established for admission of intoximeter test results when the state established that the examiner was a certified peace officer, that the examiner possessed a valid permit to operate the intoximeter, that the examiner continuously maintained that permit and that the examiner's permit was in effect on the day the examiner administered the test. *Pratt v. State*, 208 Ga. App. 617, 431 S.E.2d 397 (1993).

Results of a breath test were not inadmissible on the basis that the state trooper who inspected the machine did not actually test each component individually to determine if the machine was in good working order. *Gaston v. State*, 227 Ga. App. 666, 490 S.E.2d 198 (1997).

Testimony of a forensic chemist that the chemist was trained to use the intoximeter machine and used the machine almost daily, and that the machine was working properly and all of the machine's working parts were in order at the time of the test was sufficient to meet the foundational requirements of O.C.G.A. § 40-6-392. *Waggoner v. State*, 228 Ga. App. 148, 491 S.E.2d 88 (1997).

State presented an adequate foundation for admission of alcohol breath test results in a prosecution for driving under the influence since there was proof that the arresting officer was certified to operate the machine and had ensured that the machine was working properly before the breath test, and the officer also testified that the machine was periodically checked for calibration and that the machine had been calibrated a few weeks prior to the breath test. *Pak v. State*, 234 Ga. App. 538, 507 S.E.2d 166 (1998).

When it was undisputed that a machine

used to analyze breath tests was routinely inspected, and that maintenance protocols were followed, a technician's testimony, in conjunction with the technician's certificates, was more than adequate to lay the foundation necessary to admit the defendant's breath test results. *Hammontree v. State*, 236 Ga. App. 342, 512 S.E.2d 342 (1999).

Sufficient evidence was offered to allow admission of the defendant's breath test in order to prove the defendant's violation of O.C.G.A. § 40-6-391(a)(5) when the oral testimony of the administering officer indicated the officer's qualifications and compliance with the approved methods of the test as required by O.C.G.A. § 40-6-392(a)(1)(A); the court found that an adequate foundation had been laid in order to admit the test results. *Scara v. State*, 259 Ga. App. 510, 577 S.E.2d 796 (2003).

Trial court did not err in allowing the Intoxilyzer results into evidence as the arresting officer testified that as to training and certification, the machine's inspection certificates were admitted, and the officer testified further that the machine passed the machine's own diagnostic test, appeared to be in good working order, and did not appear to have any parts missing. *Stapleton v. State*, 279 Ga. App. 296, 630 S.E.2d 769 (2006).

Even though the testifying officer did not, personally, conduct the required testing of the machine, an adequate foundation was provided by the officer's testimony that the machine was in proper working order, as evidenced by "self-tests," and that a qualified officer signed the required certificate. *Evans v. State*, 230 Ga. App. 728, 497 S.E.2d 248 (1998).

"Self-authenticating" provision of subsection (f) of O.C.G.A. § 40-6-392 contained the proper foundation for admission of a certificate of inspection, and a further foundation under the "business records" exception of former O.C.G.A. § 24-3-14(b) (see now O.C.G.A. § 24-8-803) was not necessary. *Jackson v. State*, 233 Ga. App. 568, 504 S.E.2d 505 (1998).

Intoxilyzer test results were improperly excluded under O.C.G.A. § 40-6-392 since

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the state produced a properly prepared and executed certificate of inspection certifying that the electronic components and operating parts of the device were properly attached and in good working order. Any failure of the device to have passed an operational requirement by registering a 0.074 reading in the device's analysis of the control solution during the difference check went to the weight, not the admissibility, of the test results. *State v. Carter*, 292 Ga. App. 322, 665 S.E.2d 14 (2008).

Admission of testimony concerning breath test when section complied with. — Trial court did not err in admitting testimony concerning the defendant's breath test in prosecution for driving under the influence when the arresting officer advised the defendant, pursuant to O.C.G.A. § 40-6-392, of the defendant's right to undergo additional chemical tests of the amount of alcohol in the defendant's blood and such officer administering the test testified as to the defendant's training to conduct such breath tests and the defendant's certificate, issued by the State Crime Laboratory (now Division of Forensic Sciences of Georgia Bureau of Investigation), was properly introduced into evidence. *Fletcher v. State*, 157 Ga. App. 707, 278 S.E.2d 444 (1981).

Admissibility of test results is controlled by the provisions of O.C.G.A. § 40-6-392 and, so long as a test has been conducted in compliance with those statutory provisions, an expert's opinion which questions the reliability of the results of that test would have no bearing on the admissibility of those results into evidence. *Close v. State*, 195 Ga. App. 652, 394 S.E.2d 563 (1990).

When the defendant refused to submit to a state-administered breath test, telling the officer that "attorneys in the past had advised him never to take the breath test," admission of evidence of the defendant's refusal was not error because, by defendant's own statement, the defendant demonstrated that the defendant was not deprived of an opportunity to make an informed choice. *Allenbrand v. State*, 217 Ga. App. 609, 458 S.E.2d 382 (1995).

Evidence sufficient to show foundation properly laid. — Police officer's

testimony that the officer conducted the breath test, that the officer was certified to operate the machine, and that the machine appeared to be working properly, despite an apparent malfunction by the printer, was sufficient to lay a proper foundation for admission of the results of the test. *Banks v. State*, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Testimony on screening test admissible. — Proper foundation for the testimony of a police officer regarding an alco-sensor test the officer administered was laid by the officer's statement regarding the officer's training and experience, and testimony by that officer and another that the defendant showed positive for the presence of alcohol in the defendant's body was admissible. *Gray v. State*, 222 Ga. App. 626, 476 S.E.2d 12 (1996).

Inference of blood-alcohol level permitted. — When chemical analysis of defendant's blood at the time of the defendant's arrest approximately one hour after a collision showed a blood-alcohol level of .30 grams percent, the jury was authorized to infer that the defendant's blood-alcohol at the time of the collision was .08 grams percent or greater. The absence of testimony about the metabolic rate of alcohol in the blood so as to permit a calculation of blood-alcohol content at the actual time of the collision did not render the evidence insufficient to support the desired inference. *Cheevers v. Clark*, 214 Ga. App. 866, 449 S.E.2d 528 (1994).

Impeachment purposes. — Evidence of defendant's .09 BAC was admissible to rebut the defendant's testimony regarding consumption of only three beers over a five hour period and the subsequent inference raised thereby that the defendant was not intoxicated. *Jones v. State*, 241 Ga. App. 515, 527 S.E.2d 223 (1999).

Effect of prior administrative action. — Dismissal of an administrative action against the defendant to suspend the defendant's license for allegedly refusing to take a breath test is irrelevant to the question of refusal and to the question of the admissibility of evidence of refusal in a subsequent court proceeding. *Sheffield v. State*, 184 Ga. App. 141, 361 S.E.2d 28 (1987).

Admissibility of evidence in civil actions. — Even though breach of the

notice requirement renders evidence of the blood test administered by the state inadmissible to establish a presumption that the allegedly drunken driver was driving under the influence, such evidence should be admitted for impeachment purposes in the trial of a civil action. *Ensley v. Jordan*, 244 Ga. 435, 260 S.E.2d 480 (1979).

When the doctor who treated plaintiff-driver in the hospital emergency room following the accident detected what the doctor thought was the odor of alcohol about the plaintiff-driver and, without a request or direction by the officer, ordered a blood-alcohol test to be performed upon the plaintiff-driver in order to determine the type of anesthesia to use on plaintiff-driver, the blood-alcohol test results were admissible under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803) as part of a hospital record made in the regular course of hospital business and, thus, compliance with paragraphs (a)(2) and (a)(3) of O.C.G.A. § 40-6-392 was not a prerequisite to the admission of the blood test results. *Bynum v. Standard (Chevron) Oil Co.*, 157 Ga. App. 819, 278 S.E.2d 669 (1981).

Evidence of refusal to submit to blood-alcohol testing is admissible in civil cases. *Stacy v. Caldwell*, 186 Ga. App. 293, 367 S.E.2d 73, cert. denied, 186 Ga. App. 919, 367 S.E.2d 73 (1988).

In an action for damages for injuries sustained in an automobile collision, the trial court did not err in permitting an examining and treating physician to testify concerning the defendant's intoxication utilizing the hospital business records as well as the physician's observation of the defendant during examination in the hospital. *Studebaker's of Savannah, Inc. v. Tibbs*, 195 Ga. App. 142, 392 S.E.2d 908 (1990).

Failure of defendant to object. — Although the admissibility of test results was affected by the state's failure to lay a proper foundation, by failing to object when testimony as to the results was offered, the defendant waived any objection the defendant could have made and the testimony was not illegally admitted. *Carr v. State*, 222 Ga. App. 776, 476 S.E.2d 75 (1996).

Printout reflecting an "insufficient sample," and thus no analysis and no result, is not subject to discovery under O.C.G.A. § 17-16-23 because if there is no test and no result, there is nothing to discover. *State v. Tan*, 305 Ga. App. 55, 699 S.E.2d 74 (2010).

No error in admission. — Since there was no attempt by the defense to push for discovery of the printout from a gas chromatograph, no refusal by the state to produce that document, and no request by the defense for a continuance for additional time to examine the printout, which was available at trial, the trial court did not abuse the court's discretion in admitting the testimony of the state's expert witness, despite the prosecutor's failure to produce the printout before trial. *Birdsall v. State*, 254 Ga. App. 555, 562 S.E.2d 841 (2002).

Despite a contention by the defendant that the inspection certificates for the Intoxilyzer 5000 were inadmissible hearsay, the evidence was properly admitted based on the officer's testimony independent of the inspection certificates. *Braswell v. State*, 281 Ga. App. 500, 636 S.E.2d 689 (2006).

Because the evidence sufficiently showed that the defendant asked for a blood test in response to the officer's request to submit to the state-administered breath test, clearly attempting to designate the state-administered test, not request an independent test, and the defendant understood that the type of test that would be done was solely of the state's choosing, the trial court properly denied a motion to suppress the breath test results obtained. *Brooks v. State*, 285 Ga. App. 624, 647 S.E.2d 328 (2007).

In a prosecution for DUI, the trial court did not err in denying the defendant's motion to suppress the blood test evidence as the trial court properly allowed the discovery of notes, memoranda, graphs, or computer printouts pertaining to the blood sample taken, as well as all chain of custody documentation, because they were the only items deemed relevant to the prosecution; suppression of the blood test results was not required, as the defendant waived error on appeal as to the absence of one of the two lab testers.

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Cottrell v. State, 287 Ga. App. 89, 651 S.E.2d 444 (2007), cert. denied, No. S07C1894, 2007 Ga. LEXIS 816 (Ga. 2007).

Trial court did not err in denying the defendant's motion to suppress and motion in limine to exclude the defendant's field sobriety test results because the officers who stopped the defendant's vehicle were not required to advise the defendant of the defendant's Miranda rights prior to the field sobriety testing since although the defendant was not free to leave, the defendant was not handcuffed or placed in the patrol car during the investigation, and in addition to informing the defendant of the reason for the stop, the officers told the defendant that the officers had to wait for a HEAT Unit officer to determine whether the defendant was too impaired to safely operate the defendant's vehicle; based upon the circumstances, the trial court was authorized to find that a reasonable person would believe that the defendant's freedom of action was only temporarily curtailed pending further investigation during the traffic stop, and the delay of approximately twenty-five minutes between the initial stop and the HEAT Unit officer's arrival at the scene did not automatically convert the investigation into a custodial situation. *Waters v. State*, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

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Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392) is evidentiary in nature rather than substantive. *Head v. State*, 246 Ga. 360, 271 S.E.2d 452 (1980).

Waiver of objections to evidence. — Defendant's objections to blood and urine evidence, based on allegations that the state failed to comply with O.C.G.A. § 40-6-392, were not raised at the time the evidence was introduced and were therefore waived. *Glover v. State*, 230 Ga. App. 795, 498 S.E.2d 300 (1998).

"Time of arrest" construed. — Ruling of the trial court that since the officer failed to inform this defendant of the defendant's rights under O.C.G.A. § 40-6-392 at the time of arrest the re-

sults of the alcohol test should be suppressed constituted a construction of the term "time of arrest" which was too narrow and restrictive and was clearly erroneous. *State v. Lubin*, 164 Ga. App. 689, 297 S.E.2d 371 (1982).

Presumption of intoxication. — When the result of an intoximeter test indicated that there was .15 percent alcohol content in the blood, the results give rise to a presumption of intoxication. *Helmly v. State*, 142 Ga. App. 577, 236 S.E.2d 540 (1977).

In an evaluation of the sufficiency of the evidence, when the petitioner was convicted of voluntary manslaughter, the court considered evidence as to the percentage of alcohol in the victim's blood, but did not rely on this statutory presumption. *Holloway v. McElroy*, 632 F.2d 605 (5th Cir. 1980), cert. denied, 451 U.S. 1028, 101 S. Ct. 3019, 69 L. Ed. 2d 398 (1981).

Court may charge that the "presumption" authorized by a breathalyzer reading of more than .10 alcohol in the blood creates merely a "permissive presumption." Such a presumption allows, but does not require, the trier of fact to infer the elemental fact from proof by the prosecutor of a basic one and does not place any kind of burden upon the defendant. *McCann v. State*, 167 Ga. App. 368, 306 S.E.2d 681 (1983), cert. denied, 464 U.S. 1044, 104 S. Ct. 711, 79 L. Ed. 2d 174 (1984).

Presumption of sobriety. — Presumption of sobriety contained in paragraph (b)(1) of O.C.G.A. § 40-6-392 is irrelevant when the ultimate issue before the jury is the defendant's impaired ability to drive as the result of being under the influence of a drug. *Perano v. State*, 167 Ga. App. 560, 307 S.E.2d 64 (1983).

Trial court did not err by failing to give the jury the defendant's requested instruction on the statutory presumption of sobriety as set forth in O.C.G.A. § 40-6-392(b)(1) because the defendant's request was predicated upon the driving under the influence (DUI) less safe count of the indictment, of which the jury found the defendant not guilty; O.C.G.A. § 40-6-392(b)(1) applied only to DUI less safe violations and did not entitle the

defendant to a presumption of sobriety with respect to the defendant's reckless driving violation. *Travis v. State*, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Breath testing instrument inspection certificate admissible. — In a defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391, the inspection certificate for the instrument used to conduct the defendant's breath test under O.C.G.A. § 40-6-392(f) was properly admitted because it was not testimonial hearsay and did not violate the defendant's rights of confrontation; it was a business record that was not made in an investigatory or adversarial setting or generated in anticipation of the prosecution of a particular defendant. *Rackoff v. State*, 281 Ga. 306, 637 S.E.2d 706 (2006).

Presumption does not apply to violation of O.C.G.A. § 40-6-391(k)(1). — Although O.C.G.A. § 40-6-392(b)(1) provided that it was to be presumed that persons with an alcohol concentration of .05 were not under the influence of alcohol, that statutory provision did not apply to a charge that a person under the age of 21 violated O.C.G.A. § 40-6-391(k)(1) with an alcohol concentration of .02 or more, and since that was part of the charge in the defendant's case, the presumption did not apply. *David v. State*, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Circumstantial evidence. — When the trial court properly granted a defendant's motion to suppress the results of the intoximeter test because of a de facto denial of the defendant's right to have an additional test of the defendant's own choosing, there was sufficient competent circumstantial evidence to authorize the reasonable trier of fact to find the appellant guilty beyond a reasonable doubt of driving under the influence of alcohol. *Porter v. State*, 195 Ga. App. 388, 393 S.E.2d 513 (1990).

Discovery of source code for breath testing device. — Defendant pointed to no evidence showing that the source code for a breath testing device was within the possession, custody, or control of the state. Thus, the trial court properly denied the defendant's motion to discover the source code. *Mathis v. State*, 298 Ga. App. 817, 681 S.E.2d 179 (2009).

Defendant failed to show that the trial court erred in denying the defendant's request for a certificate of materiality seeking the source code for the device that was used to test the defendant's blood-alcohol content, because the defendant presented no admissible evidence during the hearing on the motion and no evidence to support the factual contention that the provider was acting as an arm of law enforcement and that the provider and the state were joint participants in an enterprise. *Parker v. State*, 326 Ga. App. 217, 756 S.E.2d 300 (2014).

Charging jury as to rebuttable nature of presumptions. — When the trial judge, in instructing the jury on presumption under Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392), failed to instruct that such presumption was rebuttable, and when there was no request for more specific instructions, such error, if any, was harmless in light of the defendant's admission that the defendant was far under the influence of alcohol at time the defendant was stopped. *Prickett v. State*, 155 Ga. App. 668, 272 S.E.2d 534 (1980).

When the trial court in the case before the court charged that the presumption arising from the results of a breathalyzer test was rebuttable, the Court of Appeals rejected the argument that the charge was either burden shifting in the first instance or that the charge became so because the defendant offered no evidence in the defendant's own behalf. *Brown v. State*, 174 Ga. App. 470, 330 S.E.2d 408 (1985).

No explanation to the jury about the rebuttal of presumptions in O.C.G.A. § 40-6-392 was necessary when the trial court referred to the presumptions in the court's charge to the jury, but also clearly stated that under the state's accusation against the defendant those presumptions did not apply. *Stewart v. State*, 176 Ga. App. 148, 335 S.E.2d 603 (1985).

Trial court's jury charge that the presumption arising from an alcohol concentration of 0.05 or less is rebuttable was correct and did not shift the burden of proof to the defendant. *Cornell v. State*, 239 Ga. App. 127, 520 S.E.2d 782 (1999).

Jury instructions. — In a wrongful death action, the trial court erred in giving a jury instruction in the language of

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O.C.G.A. § 40-6-392(c) because the evidence indicated that the decedent crossed the street between an intersection with a traffic signal and an intersection with a stop sign, not between adjacent intersections at which traffic-control signals were used. *Silvers v. Kimbell*, 219 Ga. App. 482, 465 S.E.2d 530 (1995).

In a prosecution for driving under the influence - less safe driver, it was error to charge to the jury that if the jury believed the defendant's alcohol concentration was .08 percent or more "it shall be inferred" that the defendant was under the influence of alcohol, and the giving of generalized instructions regarding the state's burden and the jury's responsibilities was insufficient to overcome the mandatory nature of the instruction. *Stepic v. State*, 226 Ga. App. 734, 487 S.E.2d 643 (1997).

Charge in the language of O.C.G.A. § 40-6-392(b) that if the blood level exceeds certain amounts there shall be a presumption that the person was under the influence of alcohol as prohibited by provisions of O.C.G.A. § 40-6-391(a) is impermissible burden shifting but, even if improperly given, it is not relevant to the determination of any crime defined in that subsection and does not require reversal. *Knapp v. State*, 229 Ga. App. 175, 493 S.E.2d 583 (1997).

Instruction: "I charge you that breath alcohol measuring equipment approved by the State Crime Lab is considered accurate if properly operated" was a correct statement of the law and did not invade the province of the jury or shift the burden of proof. *Johnson v. State*, 231 Ga. App. 215, 498 S.E.2d 778 (1998).

The determination of whether evidence of chemical test results should be admitted under O.C.G.A. § 40-6-392(a)(1)(A) is never a jury question and, therefore, the court did not err in refusing to charge the jury as to the foundation requirements of that section. *Burke v. State*, 233 Ga. App. 778, 505 S.E.2d 528 (1998).

Instruction which stated "in any criminal trial the refusal of the defendant to permit a chemical analysis to be made of her blood, breath, urine or other bodily substances at the time of her arrest shall

be admissible into evidence against her" did not mandate the jury to infer guilt from the defendant's refusal. *Rayburn v. State*, 234 Ga. App. 482, 506 S.E.2d 876 (1998).

It was reversible error when the judge instructed the jury that "if there was at that time an alcohol concentration of 0.08 grams or more, it shall be inferred that the person was under the influence of alcohol as prohibited by Code Section 40-6-391" since, although this paraphrased the language of paragraph (b)(3) of O.C.G.A. § 40-6-392, it impermissibly shifted the burden to the defendant to prove the defendant's innocence of the driving under the influence charge under O.C.G.A. § 40-6-391(a)(1). *Davis v. State*, 236 Ga. App. 32, 510 S.E.2d 889 (1999).

As certificates of inspection regarding an Intoxilyzer 5000 used in the defendant's criminal matter were properly admitted pursuant to the business records exception to the hearsay rule under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803) and O.C.G.A. § 40-6-392(f), the trial court's refusal to give the limiting instruction regarding their use, as requested by the defendant, was not reversible error. *Neal v. State*, 281 Ga. App. 261, 635 S.E.2d 864 (2006).

In a prosecution for driving with an alcohol concentration greater than 0.08 grams, O.C.G.A. § 40-6-391(a)(5), the trial court properly instructed the jury that equipment used to measure alcohol content that was approved by the Georgia State Crime Lab was considered accurate if properly operated as this was simply an explanation of O.C.G.A. § 40-6-392(a)(1)(A). *Goethe v. State*, 294 Ga. App. 232, 668 S.E.2d 859 (2008).

Trial court did not err in charging the jury during the defendant's trial for driving under the influence of alcohol to the extent that it was less safe for the defendant to drive because the challenged charge immediately followed a proper charge regarding the implications of a defendant's refusal to submit to tests, and the defendant failed to show what harm the defendant suffered as the result of the giving of the jury instruction; the charge was adjusted to the evidence because the testimony adduced at trial showed that

the defendant was speeding immediately prior to the defendant's arrest, and the charge properly left the determination of whether the defendant was impaired in the hands of the jury. *Crusselle v. State*, 303 Ga. App. 879, 694 S.E.2d 707 (2010).

In a case in which the defendant was convicted of driving under the influence of alcohol with an unlawful blood alcohol concentration, the trial court erred in charging the jury since, as given, the charge implied that the analysis or result for a particular individual "shall be considered valid," and mandated that the jury find valid the test results showing that the defendant's blood alcohol level exceeded the legal limit. *Bailey v. State*, 323 Ga. App. 424, 747 S.E.2d 210 (2013).

Instructions on Spanish speaking individuals. — Instruction that the implied consent warning does not have to be read in Spanish to a Spanish-speaking individual was authorized under the authority of *State v. Tosar*, 180 Ga. App. 885, 350 S.E.2d 811 (1986). *Hernandez v. State*, 238 Ga. App. 796, 520 S.E.2d 698 (1999).

Even in view of evidence that a Spanish speaking defendant did not understand implied consent warnings, the trial court's instruction that the defendant's refusal to submit to testing could be considered as evidence creating an inference that the test would show the presence of alcohol or drugs was not error since the court also charged that this inference was rebuttable. *Hernandez v. State*, 238 Ga. App. 796, 520 S.E.2d 698 (1999).

Admissibility for offenses committed while person was driving. — Any person who drives or operates a motor vehicle upon the highways of Georgia shall be deemed to have given consent to a chemical test for the purpose of determining the alcoholic content of the driver's blood if the driver is lawfully arrested for any offense that is allegedly committed while driving or operating a vehicle under the influence of intoxicating liquor. Thus, after submitting to the test as is required by law, such evidence may be used for any offense that is allegedly committed while the person is driving or operating a vehicle under the influence of intoxicating liquor; but, the test result is not allowed

for offenses which allegedly arise after the driving has ceased. *Franklin v. State*, 136 Ga. App. 47, 220 S.E.2d 60 (1975).

Criminal defendant was not entitled to jury instructions based on the presumptions in O.C.G.A. § 40-6-392 when the defendant was on trial for vehicular homicide, and evidence of the defendant's blood-alcohol level was not admitted to show that the defendant was driving under the influence but was admitted as a circumstance of the defendant's arrest for vehicular homicide through reckless driving. *Collum v. State*, 195 Ga. App. 42, 392 S.E.2d 301 (1990).

Civil or administrative nature of proceedings. — Proceedings to suspend driving privileges are strictly civil or administrative in nature since no criminal consequences result from a finding adverse to the accused. *Cogdill v. Department of Pub. Safety*, 135 Ga. App. 339, 217 S.E.2d 502 (1975).

Design of intoximeter or analyzer required to be approved. — State is required to produce either a properly authenticated record that the photoelectric intoximeter (or breath analyzer) was of a design specifically approved by the director of the State Crime Laboratory (now Division of Forensic Sciences of the Georgia Bureau of Investigation), or the testimony of the director personally to that effect. *Smitherman v. State*, 153 Ga. App. 322, 265 S.E.2d 119 (1980).

Under Department of Public Safety Rule 570-9.06(5), effective October 31, 1979, the approval of the State Crime Laboratory director (now Division of Forensic Sciences of the Georgia Bureau of Investigation) was needed only for the design of any type of breath analyzer used in this state. *Willoughby v. State*, 153 Ga. App. 434, 265 S.E.2d 352 (1980).

When the intoximeter was furnished by the Department of Public Safety it may be inferred that the intoximeter's design was specifically approved by the director of the State Crime Laboratory (now Division of Forensic Sciences of the Georgia Bureau of Investigation). *McCann v. State*, 158 Ga. App. 202, 279 S.E.2d 499 (1981).

Burden of proof. — State has burden of proving that seizure of appellee's breath resulting in intoximeter results was in

Judicial Proceedings (Cont'd)

accordance with mandated procedures. *State v. Johnston*, 160 Ga. App. 71, 286 S.E.2d 47 (1981), *aff'd*, 249 Ga. 413, 291 S.E.2d 543 (1982).

In the absence of proof that the equipment utilized in the test is of the approved type under Department of Public Safety rules or has the approval of the Director of the Division of Forensic Sciences of the Georgia Bureau of Investigation the test results of the intoximeter are inadmissible. *State v. Johnston*, 160 Ga. App. 71, 286 S.E.2d 47 (1981), *aff'd*, 249 Ga. 413, 291 S.E.2d 543 (1982).

Regardless of whether the issue is addressed in a hearing on a "motion in limine" or on a "motion to suppress," the state bears the burden of proving that its evidence meets the requirements of O.C.G.A. § 40-6-392 when the state seeks to prove a defendant's criminal liability by the introduction of evidence of an intoximeter test. *McElroy v. State*, 173 Ga. App. 685, 327 S.E.2d 805 (1985).

In the absence of testimony by a defendant that the defendant was refused the opportunity for an independent test, the state's burden is merely to show that the defendant was properly advised of the defendant's rights. *Tiller v. State*, 176 Ga. App. 797, 338 S.E.2d 42 (1985).

Trial court's jury charge on blood alcohol contents over .10 percent and .12 percent under former paragraphs (b)(3) and (b)(4) of O.C.G.A. § 40-6-392, when the defendant was formally charged with violating O.C.G.A. § 40-6-391(a)(1), did not impermissibly shift the burden of proof and allow the jury to convict the defendant of an offense different than the one charged. *Waters v. State*, 195 Ga. App. 288, 393 S.E.2d 280 (1990), *cert. denied*, 498 U.S. 970, 111 S. Ct. 437, 112 L. Ed. 2d 420 (1990).

State may meet the burden of establishing the sufficiency of blood-alcohol tests by introducing a certificate of the manufacturer of the machine and certificates of officers who administered the test for the current charge and who performed the test on the defendant for a prior similar transaction. *Conner v. State*, 205 Ga. App. 564, 422 S.E.2d 872, *cert. denied*, 205 Ga.

App. 899, 422 S.E.2d 872 (1992).

Subpoenas. — Defendant has the right to subpoena memos, notes, graphs, computer print-outs, and other data relied upon by a state crime lab chemist in obtaining gas chromatography test results, but a trial court has discretion to quash an unreasonable and oppressive subpoena. *Townsend v. State*, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Prejudicial error was not shown when the trial granted a motion to quash a subpoena for production of test reports, but ruled that an expert forensic chemist of the defendant's selection would be permitted to examine a sample of the blood and directed that a sample be released to the defendant since the court thereby provided the defendant with the means to effectively challenge the validity of the sample and accuracy of the state's testing procedures and results. *Townsend v. State*, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Subpoena of personal medical records. — In the absence of waiver and without notice to the accused or an opportunity to object, it was not "appropriate" under former O.C.G.A. § 24-9-40 (see now O.C.G.A. § 24-12-1) for the state in a criminal case to subpoena a defendant's own personal medical records which were then in the possession of a physician, hospital, or health care facility. *King v. State*, 272 Ga. 788, 535 S.E.2d 492 (2000).

Autointoximeter's accuracy demonstrable to jury. — Court may explain to jurors that autointoximeter is considered accurate if properly operated without violating O.C.G.A. § 17-8-55 (see O.C.G.A. § 17-8-57), which provides: "It is error for any judge in any criminal case, during its progress . . . , to express or intimate his opinion as to what has or has not been proved or as to the guilt of the accused." *Henson v. State*, 168 Ga. App. 210, 308 S.E.2d 555 (1983).

Defendant's rights under paragraph (a)(4). — In a prosecution for driving with an unlawful blood-alcohol level, the defendant was entitled to subpoena from the state's forensic chemist the chain of custody documents and other documentation which pertained to the actual test of the defendant's blood including gas

chromatograph results. *Bazemore v. State*, 244 Ga. App. 460, 535 S.E.2d 830 (2000).

In a prosecution for driving with an unlawful blood-alcohol level, documents which pertained to the qualifications of the person who drew the defendant's blood and certification documentation for the machine were not sufficiently relevant to be discovered by the defendant. *Bazemore v. State*, 244 Ga. App. 460, 535 S.E.2d 830 (2000).

Officer's testimony as to qualifications. — Oral testimony by a police officer that the officer was certified to operate a particular model of intoximeter at the time the officer tested the defendant was not barred by the best evidence rule. *Clarke v. State*, 170 Ga. App. 852, 319 S.E.2d 16 (1984).

Testimony of officer who read implied consent notice. — In a prosecution for driving under the influence, when the state rested without producing the testimony of the officer who read the defendant the implied consent notice required by O.C.G.A. § 40-6-392(a)(4), the trial court did not abuse the court's discretion by allowing the state to reopen the state's case to produce this officer's testimony because the defendant had notice that this officer was a witness and could anticipate that the officer would be called to testify, and the defendant could not show that the trial court's actions prejudiced the defendant's ability to present a defense. *Painter v. State*, 263 Ga. App. 407, 587 S.E.2d 867 (2003).

Implied consent rules valid against criminal defendants. — Amendments adopted since 1980 to the implied consent rules, issued under the auspices of the Department of Public Safety but in fact formulated by the Division of Forensic Sciences pursuant to the mandate of O.C.G.A. § 40-6-392, have been promulgated in substantial compliance with pertinent statutory requirements and thus are valid and effective against the defendants in a criminal action. *State v. Holton*, 173 Ga. App. 241, 326 S.E.2d 235 (1984).

Charge to jury may be derived entirely from wording of statute. — Trial court was not in error with respect to the defendant when the court's charge to the

jury was derived entirely from the wording of O.C.G.A. § 40-6-392, since such a charge is not conclusive as to the issue of whether the defendant had been under the influence of alcohol at the time the defendant drove the automobile. *Morris v. State*, 172 Ga. App. 832, 324 S.E.2d 793 (1984).

Relevance of later machine accuracy test. — Testing of the intoximeter machine nearly five months after the charged incident would not prove that the machine gave an inaccurate reading for the defendant since the original test's condition, including the defendant's own physical condition, could not have been duplicated. *Walters v. State*, 195 Ga. App. 434, 394 S.E.2d 105 (1990).

Challenge to reliability of test. — When the state lays the proper foundation for the introduction of intoximeter test results, the defendant's challenge to the reliability of the test results does not affect the admissibility of the results but goes merely to the weight to be placed on the results by the jury. *Sanders v. State*, 176 Ga. App. 869, 338 S.E.2d 5 (1985).

Discrepancy in testimony as to a driver's request for an additional test simply creates a question of credibility for the trial court on a motion to suppress. *Cunningham v. State*, 255 Ga. 35, 334 S.E.2d 656 (1985); *Curtis v. State*, 182 Ga. App. 388, 355 S.E.2d 741 (1987).

Conflicting testimony of driver and arresting officer concerning advisement of right to independent test was a matter of credibility to be resolved by the trial court, no showing of an affirmative waiver being required of the state. *Osteen v. State*, 176 Ga. App. 722, 337 S.E.2d 369 (1985).

When there is a conflict over whether a defendant was advised of the defendant's right to an additional test, resolution of the question of credibility is for the trial court. *McNair v. State*, 177 Ga. App. 502, 339 S.E.2d 773 (1986); *Lovell v. State*, 178 Ga. App. 366, 343 S.E.2d 414 (1986).

Motion to suppress results denied. — When, contrary to other evidence, the defendant testified that the implied consent warnings were not read to the defendant at the scene of the defendant's arrest or at the sheriff's office and that the defendant had the money to pay for such a

Judicial Proceedings (Cont'd)

test, but two or three deputies told the defendant that the defendant did not want the test because the test cost too much, and defendant contended it was error to deny the defendant's motion to suppress the results of the intoximeter test because the defendant was denied the defendant's right to an independent blood test, the Court of Appeals would not reverse the ruling of the trial court because the evidence did not demand a finding contrary to the judge's determination. *Branch v. State*, 182 Ga. App. 818, 357 S.E.2d 136 (1987).

Driving on wrong side of road justified stop. — Investigating officer had a reasonable articulable suspicion to stop the defendant's vehicle based on a violation of O.C.G.A. § 40-6-40 for driving on the wrong side of the road; hence, the defendant's motion to suppress was properly denied on this ground. *Dunbar v. State*, 283 Ga. App. 872, 643 S.E.2d 292 (2007).

Motion to exclude proper. — When it was uncontroverted in three consolidated cases that the arresting officer did not inform the defendant of the defendant's right, after submission to the state-administered test, to have an independent test administered by a qualified person of the defendant's own choosing, the trial court properly granted the defendant-appellees' motions to exclude the results of the state-administered tests or the refusal to submit to such testing. *State v. Hassett*, 216 Ga. App. 114, 453 S.E.2d 508 (1995).

Trial court error not warranting reversal. — Trial court erred in allowing the officer to respond to a question regarding the legal limit for DUI; however, this error did not warrant reversal. *Taylor v. State*, 204 Ga. App. 489, 419 S.E.2d 745 (1992).

Charge as to admissibility of evidence of refusal to take test. — Giving the state's requested charge that the appellant's refusal to permit a chemical analysis of the appellant's blood, breath,

or urine was admissible in evidence was not error. *Wyatt v. State*, 179 Ga. App. 327, 346 S.E.2d 387 (1986).

Jury charge under paragraph (b)(3) erroneous when defendant tried under other provision. — Trial court's error in charging the burden-shifting language of former paragraph (b)(3) of O.C.G.A. § 40-6-392 required the reversal of the defendant's conviction inasmuch as the defendant was tried only for violating O.C.G.A. § 40-6-391(a)(1). *King v. State*, 200 Ga. App. 511, 408 S.E.2d 509 (1991).

Superfluous language in jury charge not harmful. — Although jury instructions concerning being a less safe driver under O.C.G.A. § 40-6-391(a)(1)-(3) and the inferences listed in paragraphs (b)(1)-(3) (see now paragraph (b)91), (b)(2)) are superfluous in a prosecution under O.C.G.A. § 40-6-391 for driving while under the influence by having .12 percent or more alcohol in the blood, the additional language is not harmful when the jury is informed of the legal ramifications of a blood-alcohol content of over .12 percent and there is evidence that the defendant's blood-alcohol content was greater than .12 percent. *Courson v. State*, 184 Ga. App. 793, 363 S.E.2d 41 (1987).

Erroneous charge on conclusions drawn from various blood alcohol levels. — Court's erroneous charge on the conclusions that may be drawn according to various blood alcohol levels using the prohibited term "presumption" was not corrected by the court's subsequent amendment substituting the term "inference" for the prohibited term. *Holcomb v. State*, 217 Ga. App. 482, 458 S.E.2d 159 (1995).

Appeals. — When the defendant accepted the benefit of the trial court's ruling suppressing the results of the chemical tests administered by the state, and finding that the defendant was capable of withdrawing defendant's consent to testing and indeed refused the request to test, the defendant was prohibited on appeal to reverse that position and argue that the defendant did not refuse. *Gantt v. State*, 263 Ga. App. 102, 587 S.E.2d 255 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under former Code 1933, § 68-1625.1, are included in the annotations for this Code section.

Time of applicability. — Provisions of O.C.G.A. § 40-6-392 which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52.

In context of former Code 1933, § 64B-306 (see O.C.G.A. § 40-5-55), driver has no election of chemical test to be administered. 1977 Op. Att'y Gen. No. 77-21.

Driver must be informed of the driver's right to an additional test so that the driver may challenge the accuracy of the chemical test administered by the state. 1977 Op. Att'y Gen. No. 77-21.

Responsibility of obtaining the additional tests rests with the driver. 1977 Op. Att'y Gen. No. 77-21.

Driver may designate additional test. — It is only with regard to the independent or additional test that the driver may designate the chemical test to be administered. 1977 Op. Att'y Gen. No. 77-21.

For legal status and effect of alcolyzer test, see 1972 Op. Att'y Gen. No. 72-46 (rendered under former Code 1933, § 68-1625.1).

Evidence admissible in any action. — Evidence of the amount of alcohol or drug in the tested person's blood is admissible in any civil or criminal action arising out of the acts alleged to have been committed while the person was driving under the influence of alcohol or other drugs. 1976 Op. Att'y Gen. No. 76-11.

When test results given to person tested. — If the person given a blood alcohol test requests the results of the test, then a copy of the blood-alcohol report should be given to that person or their attorney; copies of blood-alcohol reports should not be distributed under any other circumstances unless a subpoena is issued from a court of competent jurisdiction. 1976 Op. Att'y Gen. No. 76-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 346 et seq. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 988 et seq.

Am. Jur. Proof of Facts. — Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 POF3d 229.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 POF3d 459.

Am. Jur. Trials. — The Impaired Driver — Ascertaining Physical Condition, 4 Am. Jur. Trials 615.

Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123.

Failure to Protect Public From an Intoxicated Driver, 34 Am. Jur. Trials 499.

Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79.

Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1.

Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1592, 1597, 1607.

ALR. — Driving automobile while intoxicated as a substantive criminal offense, 42 ALR 1498; 49 ALR 1392; 68 ALR 1356; 142 ALR 555.

Admissibility and weight of evidence based on scientific test for intoxication or presence of alcohol in system, 127 ALR 1513; 159 ALR 209.

Degree or nature of intoxication for purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 ALR 555.

Requiring submission to physical examination or test as violation of constitutional rights, 164 ALR 967; 25 ALR2d 1407.

Validity of legislation creating presumption of intoxication or the like from presence of specified percentage of alcohol in blood, 46 ALR2d 1176.

Qualification as expert to testify as to findings or results of scientific test to determine alcoholic content of blood, 77 ALR2d 971.

Construction and application of statutes creating presumption or other inference of intoxication from specified percentages of alcohol present in system, 16 ALR3d 748.

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver, 72 ALR3d 325.

Driving while intoxicated: duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law, 95 ALR3d 710.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods, 96 ALR3d 745.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 ALR3d 852.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 ALR3d 572.

Evidence of automobile passenger's blood-alcohol level as admissible in support of defense that passenger was contributorily negligent or assumed risk of automobile accident, 5 ALR4th 1194.

Admissibility in criminal case of blood-alcohol test where blood was taken despite defendant's objections or refusal to submit to test, 14 ALR4th 690.

Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 ALR4th 1112.

Drunk driving: Motorist's right to private sobriety test, 45 ALR4th 11.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage, 54 ALR4th 149.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal, 68 ALR4th 776.

Challenges to use of breath tests for drunk drivers based on claim that partition or conversion ratio between measured breath alcohol and actual blood alcohol is inaccurate, 90 ALR4th 155.

Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 ALR5th 459.

Authentication of blood sample taken from human body for purposes of determining blood alcohol content, 76 ALR5th 1.

Authentication of organic nonblood specimen taken from human body for purposes of analysis, 78 ALR5th 1.

Admissibility and sufficiency of extrapolation evidence in DUI prosecutions, 119 ALR5th 379.

40-6-393. Homicide by vehicle.

(a) Any person who, without malice aforethought, causes the death of another person through the violation of subsection (a) of Code Section 40-6-163, Code Section 40-6-390 or 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

(b) Any driver of a motor vehicle who, without malice aforethought, causes an accident which causes the death of another person and leaves the scene of the accident in violation of subsection (b) of Code Section 40-6-270 commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

(c) Any person who causes the death of another person, without an intention to do so, by violating any provision of this title other than subsection (a) of Code Section 40-6-163, subsection (b) of Code Section 40-6-270, Code Section 40-6-390 or 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the second degree when such violation is the cause of said death and, upon conviction thereof, shall be punished as provided in Code Section 17-10-3.

(d) Any person who, after being declared a habitual violator as determined under Code Section 40-5-58 and while such person's license is in revocation, causes the death of another person, without malice aforethought, by operation of a motor vehicle, commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years, and adjudication of guilt or imposition of such sentence for a person so convicted may be suspended, probated, deferred, or withheld but only after such person shall have served at least one year in the penitentiary. (Code 1933, § 68A-903, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1976, p. 977, § 1; Ga. L. 1982, p. 1694, §§ 1, 3; Ga. L. 1983, p. 1000, § 15; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2093, § 1; Ga. L. 1999, p. 391, § 9; Ga. L. 2008, p. 1164, § 2/SB 529.)

Cross references. — Homicide generally, § 16-5-1 et seq. Suspension of driver's license for conviction for homicide by vehicle, § 40-5-54. Maintenance of separate causes of action for personal injury and property damage caused by single act of wrongful or negligent operation of motor vehicle, § 51-1-32.

Editor's notes. — Ga. L. 1999, p. 391, § 2, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Heidi's Law'."

Ga. L. 2008, p. 1164, § 6/SB 529, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses committed on or after July 1, 2008.

Law reviews. — For article discussing developments in Georgia law of homicide by vehicle in 1977, see 29 Mercer L. Rev. 55 (1977). For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

"PERSON"

PLEADINGS

EVIDENCE

JURY INSTRUCTIONS

SENTENCING

General Consideration

Constitutionality. — Paragraph (a)(5) (now (a)(6)) of O.C.G.A. § 40-6-391 is not void as creating an impermissible irrebuttable presumption that a person

with any amount of marijuana in his or her system is an unsafe driver. *Stevenson v. State*, 264 Ga. 892, 453 S.E.2d 18 (1995).

Classification of homicides by vehi-

General Consideration (Cont'd)

cle constitutional. — Classification by the General Assembly of homicides by vehicle resulting from violations of Ga. L. 1974, p. 633 (see O.C.G.A. Ch. 6, T. 40) differently from other homicides in the commission of unlawful acts is a constitutional classification. *State v. Edwards*, 236 Ga. 104, 222 S.E.2d 385 (1976).

Classification did not violate equal protection. — Trial court did not err in denying the defendant's motion in arrest of judgment since the indictment issued against the defendant for first-degree vehicular homicide was not void because the predicate offense mentioned in it, O.C.G.A. § 40-6-391, made it easier to convict those drivers who were under 21-years-old and who had an alcohol concentration of .02 or more since the disparate treatment based on age did not violate the defendant's equal protection rights under the state and federal constitutions; rather the predicate offense was rationally related to the state's legitimate interest in deterring younger, more inexperienced drivers from drinking and driving. *David v. State*, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Reckless driving charges not affected by unconstitutionality of § 40-6-391(a)(6). — Fact that O.C.G.A. § 40-6-391(a)(6) was held unconstitutional as a denial of equal protection did not apply to require dismissal of charges against the defendant that the defendant committed reckless driving in violation of O.C.G.A. § 40-6-390(a) and first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a) by reckless driving; the charges merely included the fact that marijuana was found in the defendant's blood because it was relevant to a determination that the defendant drove "in reckless disregard for the safety of persons or property." *Ayers v. State*, 272 Ga. 733, 534 S.E.2d 76 (2000).

Offense created a foreseeable risk of death by definition. — Although a jury was not explicitly instructed that the jury was required to find that a defendant was acting in a dangerous manner in order to convict the defendant of felony murder based on theft by receiving, the

jury did in fact make such a finding when the jury found the defendant guilty of vehicular homicide by reckless driving because that offense, by definition, created a foreseeable risk of death. *State v. Kelly*, 290 Ga. 29, 718 S.E.2d 232 (2011).

Conduct of accused must be cause of death. — Subsections (a) and (b) of O.C.G.A. § 40-6-393 both provide that conduct of an accused must be the cause of death in order to warrant a conviction. *Williams v. State*, 165 Ga. App. 831, 302 S.E.2d 736 (1983).

Because the evidence presented by the state was insufficient to convict the defendant of first-degree vehicular homicide under O.C.G.A. § 40-6-393(a) predicated on a violation of O.C.G.A. § 40-6-270(b), and specifically, the state failed to prove that the defendant's failure to remain at the scene of the accident contributed to the death of the victim, but instead the evidence showed that the victim died on impact, the defendant's vehicular homicide conviction was reversed and the case was remanded for resentencing on the lesser included offense of felony hit-and-run. *Henry v. State*, 284 Ga. App. 893, 645 S.E.2d 32 (2007).

Section provides that homicide either felony or misdemeanor. — Subsection (a) of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-393) provides that "reckless driving" resulting in death is homicide by vehicle in the first degree and is a felony. Subsection (b) of those provisions generally provides that other homicides by vehicle are of the second degree and is a misdemeanor. *Berrian v. State*, 139 Ga. App. 571, 228 S.E.2d 737 (1976).

Application of subsection (b). — Implicit in the directive of subsection (b) of O.C.G.A. § 40-6-393, pertaining to the violation of any provision of the title, is the requirement that the provision set forth a specific violation. *State v. Nix*, 220 Ga. App. 651, 469 S.E.2d 497 (1996).

Elements that must be proved. — Language of subsection (c) of O.C.G.A. § 40-6-393 clearly requires that the state prove not only that the accused was operating a motor vehicle after having been declared a habitual violator, but that such act caused the death of another person. *Everett v. State*, 216 Ga. App. 444, 454 S.E.2d 620 (1995).

Use of DUI statute as predicate offense. — Trial court did not err in denying the defendant's motion in arrest of judgment as the indictment sufficiently alleged that the defendant violated O.C.G.A. § 40-6-393(a) and caused the death of another person through the violation of O.C.G.A. § 40-6-391, the predicate offense, and the indictment included the causation element by alleging that the violation of O.C.G.A. § 40-6-391 was the cause of the passenger's death after the defendant, 17-years-old, lost control of the defendant's vehicle while driving with a blood alcohol level of .08. *David v. State*, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Because DUI was a predicate offense set out in the indictment against the defendant only as an element of the offense of vehicular homicide, in violation of O.C.G.A. § 40-6-393(a), and not as a separate crime for which the defendant risked separate criminal liability, a trial court did not err by denying the defendant's plea in bar because, as a felony offense, prosecution on the vehicular homicide counts were commenced within four years after the commission of the crime as required by O.C.G.A. § 17-3-1(c); the expiration of the limitations period for the driving under the influence counts did not preclude a prosecution for vehicular homicide. *Leachman v. State*, 286 Ga. App. 708, 649 S.E.2d 886 (2007), cert. denied, 2007 Ga. LEXIS 768 (Ga. 2007).

Predicating murder charge on reckless disregard. — Murder charge cannot be predicated upon homicide resulting from "reckless disregard for ... safety of persons," as that phrase is used in the reckless driving provision. *Foster v. State*, 239 Ga. 302, 236 S.E.2d 644 (1977).

Lesser included offenses. — Driving on the wrong side of the road is a lesser included offense of second degree vehicular homicide. *Rank v. State*, 179 Ga. App. 28, 345 S.E.2d 75 (1986).

Offense of driving under the influence was a lesser included offense of first degree vehicular homicide, and conviction of both offenses was proscribed. *Duncan v. State*, 183 Ga. App. 368, 358 S.E.2d 910 (1987).

Defendant could not be prosecuted for the offense of improper passing and vehic-

ular homicide since the defendant had already pled guilty to a charge of improper passing and paid a fine because improper passing was necessarily a lesser included offense of vehicular homicide. *State v. Williams*, 214 Ga. App. 701, 448 S.E.2d 700 (1994).

Rule of lenity did not apply to hit-and-run and vehicular homicide.

— Rule of lenity did not apply to the two felony charges of hit-and-run under O.C.G.A. § 40-6-270(b) and vehicular homicide under O.C.G.A. § 40-6-393(b) because it was essential to the rule that both crimes be proved with the same evidence. The element of causation of the accident was essential to prove first degree vehicular homicide, but was not necessary to prove felony hit-and-run. *Rouen v. State*, 312 Ga. App. 8, 717 S.E.2d 519 (2011).

Pre-1979 section was not arbitrary, even though there was no crime punishing serious physical injury as reckless driving and driving under the influence of alcohol were crimes in and of themselves and when applicable where no death resulted. *Head v. State*, 246 Ga. 360, 271 S.E.2d 452 (1980).

Adequate notice. — Notice given that driving under the influence of alcohol is a crime is adequate. *Head v. State*, 246 Ga. 360, 271 S.E.2d 452 (1980).

Mislabeled count. — Trial court erred in entering judgment and imposing a sentence on an allegedly mislabeled count under the guise that the jury found the defendant guilty of homicide by vehicle in the first degree instead of involuntary manslaughter, when the jury specifically acquitted the defendant on another charge of homicide by vehicle in the first degree based upon the same act and against the same victim. *Taylor v. State*, 295 Ga. App. 689, 673 S.E.2d 7 (2009), aff'd, 286 Ga. 328, 687 S.E.2d 409 (2009).

Statutory basis for vehicular homicide prosecution. — Vehicular homicide must now be prosecuted under Ga. L. 1976, p. 977 § 1, (see O.C.G.A. § 40-6-393) or the murder provision, former Code 1933, § 26-110 (see O.C.G.A. § 16-5-1). *State v. Foster*, 141 Ga. App. 258, 233 S.E.2d 215, aff'd, 239 Ga. 302, 236 S.E.2d 644 (1977).

O.C.G.A. § 40-6-393 does not preclude a malice murder charge in ve-

General Consideration (Cont'd)

hicular deaths. *Chester v. State*, 262 Ga. 85, 414 S.E.2d 477 (1992).

Homicide caused by violating reckless driving provision, Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-390, must be prosecuted under Ga. L. 1976, p. 977, § 1 (see O.C.G.A. § 40-6-393), and not as for murder or involuntary manslaughter. *State v. Foster*, 141 Ga. App. 258, 233 S.E.2d 215, aff'd, 239 Ga. 302, 236 S.E.2d 644 (1977).

Offenses which do not underlie second degree vehicular homicide. — Neither driving under the influence nor reckless driving can act as the underlying traffic offense for a conviction of second degree vehicular homicide. *McKinney v. State*, 204 Ga. App. 323, 419 S.E.2d 339 (1992).

Evidence of reckless driving supported vehicular homicide conviction. — Evidence that the defendant drove after the defendant admittedly consumed methadone, Xanax (alprazolam), and Percocet and that the defendant crossed over the center line of the road in violation of O.C.G.A. § 40-6-40(a) and collided with another vehicle, killing the driver, was sufficient to show the defendant drove while impaired and drove recklessly under O.C.G.A. § 40-6-390(a), supporting the defendant's vehicular homicide conviction under O.C.G.A. § 40-6-393(a). *Wright v. State*, 304 Ga. App. 651, 697 S.E.2d 296 (2010).

Guilty verdicts not mutually exclusive. — Although verdicts finding the defendant guilty of first degree vehicular homicide in the deaths of two victims and of second degree vehicular homicide in the deaths of two other victims were inconsistent, the verdicts were not mutually exclusive based on the contention that, by finding second degree vehicular homicide, the jury must have found that the defendant did not drive recklessly, thereby excluding the defendant's conviction for first degree vehicular homicide. *Davis v. State*, 245 Ga. App. 402, 538 S.E.2d 67 (2000).

Verdict not inconsistent with felony murder verdict. — Verdicts convicting a defendant of felony murder and vehicular homicide were not inconsistent

because the felony murder, and the underlying aggravated assault, were based on the defendant driving a vehicle at the victim's vehicle, while the vehicular homicide charge was based on the defendant causing the victim's death by intentionally changing lanes when it was not safe to do so, meaning that the two crimes were based on distinct underlying acts, and it was neither legally nor logically impossible to convict the defendant of both crimes. *Mills v. State*, 280 Ga. 232, 626 S.E.2d 495 (2006).

Intent. — When the case arose from an intersection collision between a car driven by the defendant and another car, a red Mustang, and when the defense's contentions at trial were that the defendant thought the light was green, that the defendant had no intention of running a red light or of causing the victim's death, and that if the defendant did run the red light, it was the result of legal mistake or accident, the trial court did not err by charging the jury on the intent required to commit the offenses charged; the state was required to prove the intent to do the act which resulted in the violation of the law and not the intent to commit the crime itself. *Hoffer v. State*, 192 Ga. App. 378, 384 S.E.2d 902, cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Involuntary manslaughter distinguished. — Trial court did not err in failing to compel the state to prosecute the defendant under the involuntary manslaughter statute rather than the vehicular homicide statute for the General Assembly made a rational distinction between the two offenses. *Williams v. State*, 171 Ga. App. 546, 320 S.E.2d 389 (1984).

Jurisdiction. — As the focus of a jurisdictional statute was a charge against a specific person, it divested a probate court of jurisdiction over an underlying misdemeanor offense, like reckless driving, when the person was charged with felony vehicular homicide. *State v. Perkins*, 276 Ga. 621, 580 S.E.2d 523 (2003).

Transfer of case involving juveniles to superior court. — Evidence that a juvenile had a history of using marijuana and other drugs, had used marijuana before the juvenile lost control of a car the

juvenile was driving while racing another car on a public street, causing a multi-car collision in which two people died, had challenged other people to automobile races on several occasions, violated the conditions of the juvenile's driver's license by driving with a non-family member, and used drugs after the accident was sufficient to support the juvenile court's judgment that the juvenile was not amenable to treatment in the juvenile court system and that the interests of the juvenile and the community would be better served if the case was transferred to the superior court. In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004).

Application to nondrivers. — Nothing in the statutory language of O.C.G.A. § 40-6-393(c) prohibits a vehicular homicide conviction against a pedestrian or a non-driver. Indeed, an individual may be a party to a violation of the traffic laws without driving. Nelson v. State, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

Evidence insufficient to show for conviction based on failure to stop and render aid. — Defendant was entitled to have the conviction for homicide by vehicle based on failure to stop and render aid set aside because there was no evidence that the victim would have survived the injuries if the defendant had stopped to assist the victim. Walker v. State, 293 Ga. 709, 749 S.E.2d 663 (2013).

Cited in Torley v. State, 141 Ga. App. 366, 233 S.E.2d 476 (1977); Brock v. State, 146 Ga. App. 78, 245 S.E.2d 442 (1978); Wilson v. State, 147 Ga. App. 560, 249 S.E.2d 361 (1978); Brown v. State, 152 Ga. App. 273, 262 S.E.2d 497 (1979); Gooch v. State, 155 Ga. App. 708, 272 S.E.2d 572 (1980); Department of Human Resources v. J.R.S., 161 Ga. App. 262, 287 S.E.2d 713 (1982); Beaman v. State, 161 Ga. App. 129, 291 S.E.2d 244 (1982); Rogers v. State, 163 Ga. App. 641, 295 S.E.2d 140 (1982); Walker v. State, 163 Ga. App. 638, 295 S.E.2d 574 (1982); Johnson v. State, 170 Ga. App. 433, 317 S.E.2d 213 (1984); Cunningham v. State, 255 Ga. 35, 334 S.E.2d 656 (1985); Cauthen v. State, 177 Ga. App. 565, 340 S.E.2d 199 (1986); Laymac v. State, 181 Ga. App. 737, 353 S.E.2d 559 (1987); Brown v. State, 182 Ga. App. 682, 356 S.E.2d 663 (1987); Watkins

v. State, 191 Ga. App. 87, 381 S.E.2d 45 (1989); Scavonne v. State, 193 Ga. App. 603, 388 S.E.2d 735 (1989); Jackson v. State, 198 Ga. App. 261, 401 S.E.2d 289 (1990); State v. Johnson, 270 Ga. 111, 507 S.E.2d 443 (1998); In the Interest of A.L.S., 261 Ga. App. 778, 584 S.E.2d 27 (2003); Roberts v. State, 280 Ga. App. 672, 634 S.E.2d 790 (2006); Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89 (2009).

"Person"

Unborn children not covered. — Legislature did not intend for the term "person" as used in O.C.G.A. § 40-6-393 to encompass unborn children. Billingsley v. State, 183 Ga. App. 850, 360 S.E.2d 451 (1987).

Child who lived eleven hours after delivery was "person." — After the defendant injured a pregnant woman whose child lived approximately 11 hours after being delivered by emergency Caesarean section, the child was a "person" at the time of the child's death and the trial court erred by granting the defendant's general demurrer to a charge of vehicular homicide. State v. Hammett, 192 Ga. App. 224, 384 S.E.2d 220 (1989).

Pleadings

Indictment for felony murder and vehicular homicide. — Defendant could be indicted for vehicular homicide under O.C.G.A. § 40-6-393 and felony murder during the commission of fleeing and attempting to elude a police officer under O.C.G.A. § 40-6-395. State v. Tiraboschi, 269 Ga. 812, 504 S.E.2d 689 (1998).

Indictment for reckless driving sufficiently alleged first degree vehicular homicide. — By alleging that a defendant violated the reckless driving statute, O.C.G.A. § 40-6-390, an indictment incorporated the elements of that offense that the defendant drove the vehicle in reckless disregard for the safety of persons or property, and was sufficient to assert an indictment for vehicular homicide in the first degree. State v. Biddle, 303 Ga. App. 384, 693 S.E.2d 539 (2010).

Indictment tracking statute with explanation held sufficient. — When the indictment charging the defendant

Pleadings (Cont'd)

with homicide by vehicle tracked the language of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-390), accusing the defendant of "driving his motor vehicle in a reckless disregard for the safety of the deceased," but also contained the additional phrase "by failing to grant the right of way to oncoming traffic," a common-sense reading of the entire indictment made it clear that the defendant was being so charged, and the defendant was properly charged. *Ivie v. State*, 151 Ga. App. 496, 260 S.E.2d 543 (1979).

Indictment unclear as to whether felony or misdemeanor charged. — When the indictment merely charged vehicular homicide and did not set forth that it was of the first degree, or second degree, and in reading the allegations it was not possible to determine if the reckless manner, "failing to yield right of way," amounted to driving the vehicle "in reckless disregard for the safety of persons or property" or charged the defendant with a mere misdemeanor, that is, some other violation of Ga. L. 1974, p. 633 (see O.C.G.A. Ch. 6, T. 40); thus, the placing of Ga. L. 1976, p. 977, § 1 (see O.C.G.A. § 40-6-393) in the indictment was insufficient. *State v. Black*, 149 Ga. App. 389, 254 S.E.2d 506 (1979).

Indictment sufficient. — An indictment that directly tracked the language of subsection (a) of O.C.G.A. § 40-6-393 was sufficient to charge the defendant with felony vehicular homicide. *Duggan v. State*, 225 Ga. App. 291, 483 S.E.2d 373 (1997).

Denial of defendant's motion for a directed verdict was not err, when the jury was not compelled by the evidence to accept the defendant's theory that the victim was still alive and not dying after the defendant hit the victim and was instead killed by another vehicle. *Hood v. State*, 193 Ga. App. 701, 389 S.E.2d 264 (1989).

Evidence

Exculpatory information withheld by state. — When the defendant pled guilty to homicide by vehicle and serious injury by vehicle, the defendant should

have been allowed to withdraw the plea after the defendant discovered that the state deliberately withheld exculpatory evidence regarding the calculation of the defendant's speed and road conditions. *Carroll v. State*, 222 Ga. App. 560, 474 S.E.2d 737 (1996).

Testimony that defendant seen intoxicated weeks later near accident scene. — In prosecution for vehicular homicide, predicated on reckless driving and driving under the influence, testimony by a police officer as to finding the defendant in a car, slumped over the steering wheel and obviously drunk, at a service station near the scene of the accident, a few weeks after the accident, was admissible to show the defendant's bent of mind and course of conduct. *Head v. State*, 246 Ga. 360, 271 S.E.2d 452 (1980).

Defendant not guilty of vehicular homicide. — Evidence was insufficient to sustain a conviction for vehicular homicide in the second degree since given the position of the cars prior to the accident and given that the defendant's car did not impact with the defendant's deceased sister's car in the accident, there was no direct evidence sufficient to establish that the defendant's commission of a traffic offense was the proximate cause of the deceased's death. *McKinney v. State*, 204 Ga. App. 323, 419 S.E.2d 339 (1992).

Victim's use of marijuana as contributing factor. — When the victim hit the defendant who was improperly backing onto the highway, the victim's two passengers were killed, and the victim's urinalysis was positive for marijuana use, that evidence indisputably went to the question of whether the victim was impaired and whether that impairment contributed to the accident and the trial court erred when the court prohibited the defendant from presenting the urinalysis evidence or cross-examining the victim about marijuana use prior to the crash. *Crowe v. State*, 277 Ga. 513, 591 S.E.2d 829 (2004).

Witness' testimony that "person is under the influence." — Charge to the jury stating that "when a witness testifies that a person's under the influence of alcohol, the witness is testifying as to a fact, and is not giving an opinion" was reversible error because the jury was er-

roneously instructed to consider what was the ultimate personal conclusion of the witnesses as a statement of the existence of the objective fact of the defendant's intoxication. *Howard v. State*, 177 Ga. App. 589, 340 S.E.2d 212 (1986).

Syringes and Narcotics Anonymous booklet seized from the defendant's car had no probative value to a vehicular homicide charge and could serve only to instill in the jury's mind that the defendant was a user of hard drugs. The inflammatory nature of these items of evidence was further enhanced by the fact that the non-drug related items found in the defendant's car were not introduced into evidence. *Nash v. State*, 179 Ga. App. 702, 347 S.E.2d 651 (1986).

Admission of a bag of syringes purchased by the defendant being prosecuted for vehicular homicide was not necessary to establish the defendant's precollision route and should not have been admitted as evidence, though such admission was harmless error. *Nash v. State*, 179 Ga. App. 702, 347 S.E.2d 651 (1986).

Defendant's admission that the defendant had used cocaine the night before the collision was admissible in a prosecution for vehicular homicide. *Nash v. State*, 179 Ga. App. 702, 347 S.E.2d 651 (1986).

Intoxication making "less safe" driver. — Evidence was presented from which a rational trier of fact could reasonably find the defendant was intoxicated and that defendant's intoxication caused the defendant to be a "less safe" driver which caused the collision and deaths of the defendant's three passengers. *Mote v. State*, 212 Ga. App. 551, 442 S.E.2d 799 (1994).

In an action in which the defendant is accused of causing the victim's death through a violation of O.C.G.A. § 40-6-391(a)(1), which makes it unlawful for a person to drive or be in actual physical control of any moving vehicle under the influence of alcohol to the extent that it is less safe for the person to drive, it is not required that the defendant be shown to have actually committed an unsafe act. *Miller v. State*, 236 Ga. App. 825, 513 S.E.2d 27 (1999).

Attempting suicide by collision supported malice murder count. — Defendant, who attempted to commit suicide by driving the defendant's car head-on into another vehicle, whose occupant was killed, could be considered as having an "abandoned and malignant" heart for purposes of implying malice, despite the fact that the primary purpose of the defendant's action was to kill oneself. *Anderson v. State*, 254 Ga. 470, 330 S.E.2d 592 (1985).

Victim's failure to wear seat belt. — Victim's failure to wear a seat belt can play no role in determining whether the defendant is guilty of vehicular homicide. *Whitener v. State*, 201 Ga. App. 309, 410 S.E.2d 796, cert. denied, 201 Ga. App. 905, 410 S.E.2d 796 (1991).

Failure to escort oversized mobile home. — Death of another person resulting from a driver's failure to provide a front escort to an oversized mobile home, as required by the driver's permit, fell squarely within the definition of "homicide by vehicle." *Wheat v. State*, 171 Ga. App. 583, 320 S.E.2d 808 (1984).

Evidence of prior speeding tickets to show recklessness. — Evidence of two prior speeding tickets and a failure to stop ticket was admissible in the defendant's trial for first degree vehicular homicide in violation of O.C.G.A. § 40-6-393 because the defendant contested recklessness and the tickets were similar in nature to the defendant's reckless conduct and showed the defendant's bent of mind and course of conduct. *Taylor v. State*, 304 Ga. App. 573, 696 S.E.2d 498 (2010).

Evidence was sufficient to convict of providing alcohol to minor. — Evidence that the defendant encouraged the minor, a 14-year old, to drink and drive when the defendant gave the minor beer and the keys to the defendant's car, knowing that the minor was about to drive, was sufficient to show that the defendant was a party to the minor's driving under the influence to the extent that it was less safe to drive and thus to support conviction for homicide by vehicle in the first degree despite the fact that the defendant was neither driving nor riding in the car that caused the deaths. *Guzman v. State*, 262 Ga. App. 564, 586 S.E.2d 59 (2003).

Evidence (Cont'd)

Evidence sufficient to withstand motion for directed verdict. — Evidence was sufficient to deny a defendant's motion for a directed verdict in a prosecution for reckless vehicular homicide, reckless driving, DUI, running a red light, and failure to exercise due care when, after smoking crack and arguing with the defendant's former spouse, the defendant struck a car from behind, struck a pedestrian, and collided with a burgundy car, killing the burgundy car's two occupants; the defendant was found slumped over on the front driver's side of the pickup truck the defendant was driving. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Evidence sufficient for conviction. — See *Quaile v. State*, 172 Ga. App. 421, 323 S.E.2d 281 (1984); *Whitener v. State*, 201 Ga. App. 309, 410 S.E.2d 796, cert. denied, 201 Ga. App. 905, 410 S.E.2d 796 (1991); *Tillery v. State*, 225 Ga. App. 89, 483 S.E.2d 333 (1997); *In re L.P.*, 228 Ga. App. 786, 492 S.E.2d 757 (1997); *Scott v. State*, 230 Ga. App. 522, 496 S.E.2d 494 (1998); *Holland v. State*, 240 Ga. App. 169, 523 S.E.2d 33 (1999); *Hill v. State*, 250 Ga. App. 9, 550 S.E.2d 422 (2001).

After the defendant admitted having consumed a six-pack of beer approximately two-and-one-half hours prior to the accident, and a forensic chemist testified that the defendant's blood alcohol level at the time of the accident would have been between .105 and .13 percent, the expert testimony was sufficient, pursuant to former subparagraph (b)(3) of O.C.G.A. § 40-6-392, to authorize the conclusion that the defendant was "under the influence of alcohol" within the contemplation of O.C.G.A. § 40-6-391(a)(1). Based on this evidence, combined with the evidence of the defendant's erratic driving, a rational trier of fact could reasonably have found the defendant guilty of vehicular homicide beyond a reasonable doubt. *Collum v. State*, 186 Ga. App. 822, 368 S.E.2d 578 (1988).

Evidence that the defendant drove a tractor-trailer truck at such a high rate of speed that other vehicles had to move out of the truck's path was sufficient to support the defendant's conviction for homi-

cide by vehicle in the first degree after the defendant's truck crashed into a vehicle and caused the victim's death as the evidence showed that the defendant drove the vehicle in reckless disregard of the safety of others, and that the defendant's recklessness caused the victim's death. *Wilkes v. State*, 254 Ga. App. 447, 562 S.E.2d 519 (2002).

Evidence supported the defendant's conviction of homicide by vehicle in the first degree, a violation of O.C.G.A. § 40-6-393(a), in relation to the death of a pedestrian who was struck while walking along the shoulder of the road given that: (1) two witnesses saw the defendant's burgundy car with the defendant's license plate strike the victim and drive away; (2) when police traced the car to the defendant, the passenger-side, including the side mirror, was damaged; (3) a fabric imprint consistent with the victim's clothing was found on the hood of the defendant's car; and (4) the defendant's friend testified that, at around the time of the accident, the defendant drove the defendant's burgundy car away from the friend's home, which was near the accident scene. *Jackson v. State*, 258 Ga. App. 806, 575 S.E.2d 713 (2002), cert. denied, 540 U.S. 1006, 124 S. Ct. 536, 157 L. Ed. 2d 413 (2003).

Trial court did not err in denying the defendant's motions for directed verdict and new trial because the evidence was sufficient to sustain the defendant's convictions for vehicular homicide and DUI when several witnesses on the scene testified that the defendant was in the driver's seat of the vehicle immediately after the accident. *Hunt v. State*, 261 Ga. App. 417, 582 S.E.2d 493 (2003).

When evidence that the defendant's blood tested positive for marijuana use within 12 hours of a collision was properly introduced and when testimony by an accident reconstruction expert and a witness indicated that the defendant was traveling recklessly on the wrong side of the road when the defendant struck the victim's vehicle, the defendant was properly found guilty of first-degree vehicular homicide and reckless driving. *Upshaw v. State*, 264 Ga. App. 878, 592 S.E.2d 523 (2003).

Because, among other evidence, the state patrol's accident reconstruction specialist opined that an officer did a "sudden-snatch left," a sudden evasive maneuver, to avoid a collision between the officer's and the defendant's vehicle during a high speed chase of the defendant, and while doing so, lost control of the vehicle and collided with an oncoming car, the jury could have found that, while fleeing and eluding the officer, the defendant veered the defendant's vehicle toward and into the lane of the officer's vehicle, causing the officer to "sudden-snatch-left," lose control of the vehicle, and collide with the oncoming car; thus, the defendant's conviction of homicide by vehicle was supported by sufficient evidence. *Ponder v. State*, 274 Ga. App. 93, 616 S.E.2d 857 (2005).

Evidence was sufficient to support the defendant's convictions for driving under the influence, vehicular homicide, reckless driving, and other charges as the evidence showed that the defendant was caught trying to take merchandise from a store, and then struck and killed the victim as the defendant left the store parking lot and turned on to a highway at a time when the defendant admittedly was under the influence of drugs. *Cromartie v. State*, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

Defendant was properly convicted of causing death while operating a vehicle after having been declared a habitual violator (O.C.G.A. § 40-6-393(c)) although the defendant was eligible to apply for a license under O.C.G.A. § 40-5-62(a)(1), the failure to apply for reinstatement of the license after five years elapsed meant that the revocation remained in effect. *Greene v. State*, 278 Ga. App. 848, 630 S.E.2d 123 (2006).

State's evidence, both direct and circumstantial, was sufficient to uphold the defendant's conviction of vehicular homicide and that the defendant violated O.C.G.A. § 40-6-391 by driving while under the influence of alcohol as the evidence established the following: testimony of eyewitnesses and of the trooper who investigated the accident established that the defendant was driving erratically and dangerously prior to the collision; the jury was entitled to consider the defendant's

admitted flight from the scene as evidence of the defendant's guilt; the defendant admitted that there were two open bottles of liquor in the defendant's car prior to the fatal crash and that the defendant had an alcohol problem on that day. *Merritt v. State*, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

There was sufficient evidence to support the defendant's conviction for vehicular homicide by driving under the influence of alcohol based on the testimony of the arresting officer that the defendant appeared intoxicated, a videotape of the defendant interacting with the officer, the testimony of an expert that indicated that the defendant took no evasive actions and struck the pedestrian in a well-lighted area, and witnesses' testimony that the defendant ran a red light. Therefore, the jury properly found that the defendant was operating the vehicle while under the influence of alcohol to the extent it was less safe for the defendant to drive. *Brown v. State*, 291 Ga. App. 383, 662 S.E.2d 206 (2008).

With regard to a defendant's convictions on six counts of first degree vehicular homicide and other crimes, the defendant failed to establish ineffective assistance of counsel as defense counsel presented seven witnesses who testified that the defendant was not driving the vehicle at issue. The fact that certain photographs and blood test sampling were not presented into evidence, other evidence that went to the defendant's defense was not admitted into evidence, and an accident reconstruction expert was not hired were reasonable strategic decisions. *Davis v. State*, 293 Ga. App. 799, 668 S.E.2d 290 (2008).

Defendant's conviction for reckless driving was appropriate because the evidence was sufficient for the jury to have found beyond a reasonable doubt that the defendant was driving the defendant's truck in a manner exhibiting a reckless disregard for the safety of others under O.C.G.A. §§ 40-6-390(a) and 40-6-393(a). Although the defendant argued that there was no direct evidence of the manner of driving, and that the circumstantial evidence supported a separate hypothesis that the defendant had lost consciousness because of

Evidence (Cont'd)

heat exhaustion and dehydration before the accident, the jury considered the testimony regarding that alternative theory and obviously rejected that theory. *Shy v. State*, 309 Ga. App. 274, 709 S.E.2d 869 (2011).

Evidence that a defendant was intoxicated at twice the legal limit and crashed the defendant's car into a tree, killing the defendant's passenger, was sufficient for the jury to find the defendant guilty of first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a), although the defendant claimed the passenger grabbed the steering wheel. *Brown v. State*, 310 Ga. App. 285, 712 S.E.2d 521 (2011).

Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol, O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, O.C.G.A. § 40-6-391(a)(1), because the state presented evidence that the defendant had a blood-alcohol content of nearly double the legal limit at or near the time the defendant veered across three lanes of traffic and collided with a driver's pick-up truck, which resulted in the death of the driver, a passenger, and the passenger's unborn child. *Jones v. State*, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

Sufficient evidence supported defendant's conviction for first-degree homicide by vehicle by violating O.C.G.A. § 40-6-391(a)(5) because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a clear plastic bottle containing 77 proof alcohol was found on the floorboard, and defendant's blood alcohol content was 0.207 grams. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Double jeopardy did not bar the defendant's retrial for misdemeanor vehicular homicide under O.C.G.A. § 40-6-393(c) as the evidence supported the conviction. The evidence established that by crossing

a highway outside of a crosswalk, the defendant placed a young child in the path of a quickly approaching van, causing the child to be struck and fatally injured. *Nelson v. State*, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

Jury found defendant guilty of not only vehicular homicide but also reckless driving (not speeding) and less-safe driving under the influence (DUI). Accordingly, the jury's verdict of first-degree vehicular homicide was proper. *Otuwa v. State*, 319 Ga. App. 339, 734 S.E.2d 273 (2012).

Evidence that the defendant borrowed her sister's car, struck the rear of a slower moving car leading to the deaths of the driver and passenger, the defendant identified herself as her sister, and the defendant signed her sister's name on the Miranda form and on her written statement supported the defendant's convictions for first degree homicide by vehicle, forgery, reckless driving, and giving a false name. *Smith v. State*, 319 Ga. App. 164, 735 S.E.2d 153 (2012).

Evidence sufficient to sustain conviction of vehicular homicide in the second degree. — See *Watts v. State*, 186 Ga. App. 358, 366 S.E.2d 849 (1988); *McKinney v. State*, 213 Ga. App. 498, 445 S.E.2d 550 (1994).

Evidence that the defendant was driving some people home in a truck from a bar, that the decedent fell off the truck bed, that the decedent was lying unconscious on the pavement, that the defendant and other people in the truck put the decedent in the truck, that the defendant and the others did not take the decedent to a hospital when the decedent regained consciousness in the truck as the decedent did not want to go to a hospital, and that the defendant did not report the accident was sufficient to support the defendant's conviction for second degree vehicular homicide when it was coupled with a doctor's testimony that the decedent, who died from brain injuries a week later, would have had a better prognosis if treated earlier. *Steele v. State*, 275 Ga. App. 651, 621 S.E.2d 606 (2005).

When the defendant, who was under the influence of methamphetamine, drove on the wrong side of the road and injured a motorist, and another motorist went to

the first motorist's assistance and was killed by an oncoming vehicle, it was not improper for a jury to reject a claim that the defendant did not proximately cause the victim's death and return a guilty verdict of vehicular manslaughter, under O.C.G.A. § 40-6-393, because there was evidence that the defendant's negligence substantially contributed to the victim's death. *McGrath v. State*, 277 Ga. App. 825, 627 S.E.2d 866 (2006), cert. denied, 2007 U.S. LEXIS 2328 (U.S. 2007).

Evidence was sufficient to support the defendant's conviction for vehicular homicide because although there was some evidence that the collision between the motorcycle and a pedestrian occurred in the roadway, other evidence indicated that the victim had crossed the road and reached the apparent safety of a tree before the defendant lost control of the motorcycle. *Greene v. State*, 278 Ga. App. 848, 630 S.E.2d 123 (2006).

Jury Instructions

Charging on lesser included offense. — In the absence of a timely written request, the trial judge in a trial for homicide by vehicle did not err in failing to charge on the lesser included offense of homicide by vehicle in the second degree. *Ivie v. State*, 151 Ga. App. 496, 260 S.E.2d 543 (1979).

In a prosecution for vehicular homicide in the first degree, even though there was sufficient evidence to convict the defendant of causing the death of the victim with malice aforethought through reckless driving and driving under the influence, there was also evidence that the defendant committed separate less culpable offenses of speeding and failing to obey a traffic signal and, thus, the defendant was entitled to a charge on the lesser included offense of second degree vehicular homicide. *Lefler v. State*, 210 Ga. App. 609, 436 S.E.2d 777 (1993).

Because there was some evidence, even from the state's witnesses, that showed that the defendant committed an act of following too closely, a traffic violation other than the more culpable offense of DUI, that may have caused the collision and resulting death, the trial court erred in failing to give the defendant's written

request for an instruction on second-degree vehicular homicide. *Brown v. State*, 287 Ga. App. 755, 652 S.E.2d 631 (2007).

Refusal to grant the defendant's requested charge on vehicular homicide in the second degree by following too closely as a lesser included offense of vehicular homicide in the first degree by driving under the influence was reversible error since there was evidence of following too closely and the evidence did not demand a finding that the driving under the influence was the sole proximate cause of the victim's death. *Hayles v. State*, 180 Ga. App. 860, 350 S.E.2d 793 (1986).

When the defendant was accused of beating the victim with a pistol and running over the victim with a car, the trial court did not err in refusing to charge on the lesser included offenses of vehicular homicide and reckless conduct. The defendant's theory was that other individuals committed the crime and that the defendant accidentally ran over the victim; thus, the evidence showed either the commission of the offenses as charged or the commission of no offense. *Lupoe v. State*, 284 Ga. 576, 669 S.E.2d 133 (2008).

Instruction on malice aforethought. — In a trial when the defendant was tried for, inter alia, homicide by vehicle in the first degree, a violation of O.C.G.A. § 40-6-393(a), the trial court did not err by instructing the jury on the meaning of the term "malice aforethought," as the explicit statutory definition of that crime contained the term "malice aforethought." *Jackson v. State*, 258 Ga. App. 806, 575 S.E.2d 713 (2002), cert. denied, 540 U.S. 1006, 124 S. Ct. 536, 157 L. Ed. 2d 413 (2003).

Instruction on proximate cause. — Trial court is not required to give an instruction on proximate cause in a prosecution for vehicular homicide when the defendant does not request the charge, and when the trial court specifically charges the jury that causation is a material element of the offense. *Billingsley v. State*, 183 Ga. App. 850, 360 S.E.2d 451 (1987).

Instruction on accident. — Appellate court erred in reversing defendant's conviction for vehicular homicide based on

Jury Instructions (Cont'd)

her failure to stop for a pedestrian in a crosswalk because those charges were strict liability offenses to which the accident defense did not apply since it was undisputed she voluntarily drove into the crosswalk and struck the child. *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

Instruction on "carelessness" rather than "recklessness" not misleading. — In charge on vehicular homicide, the trial court did not equate "reckless" with "carelessness"; even assuming that use of the term "carelessness" in one portion of the jury charge made the charge less clear than desired, after reviewing the charge as a whole, the court was satisfied that the jury had not been misled or confused. *Gathuru v. State*, 291 Ga. App. 178, 661 S.E.2d 233 (2008).

In a vehicular homicide case, the trial court did not err in not responding to a jury question with regard to the definitions of "reckless" and "carelessness" by defining the terms; initial charge, which mentioned "carelessness" only once and consistently stated that vehicular homicide had to be based on a willful, wanton, or reckless disregard for others' safety, did not allow the jury to lower the standard of proof, and more charges might have confused the jury. *Gathuru v. State*, 291 Ga. App. 178, 661 S.E.2d 233 (2008).

Instruction on criminal negligence proper. — Trial court properly charged the jury on criminal negligence at the defendant's trial for homicide by vehicle in the second degree; such a charge is applicable to vehicular homicide, regardless of the grade of the offense. *Conyers v. State*, 260 Ga. 506, 397 S.E.2d 423 (1990).

Instruction on criminal negligence not warranted. — Defendant accused of second-degree vehicular homicide was not entitled to a requested charge on criminal negligence since the state's case established that the defendant intended to violate the rules of the road by changing lanes, and the theory of criminal negligence was not supported by the facts or the evidence. *Asberry v. State*, 193 Ga. App. 711, 389 S.E.2d 18 (1989).

Instruction on circumstantial evidence. — Because the testimony from the

medical examiner amounted to direct, and not circumstantial, evidence that: (1) the accident the defendant was charged with causing caused the decedent's death; (2) either the defendant's or the other impact caused the blunt force trauma to the decedent's head; and (3) any of the impacts, alone, could have caused the trauma, the defendant's requested circumstantial evidence charge was properly denied by the trial court. *Kirk v. State*, 289 Ga. App. 125, 656 S.E.2d 251 (2008).

Disclosure by jury of verdict's premise. — There was no error in the court's failure to instruct the jury to disclose whether the jury's guilty verdicts (of vehicular homicide) were premised upon the defendant's violation of O.C.G.A. § 40-6-390 or O.C.G.A. § 40-6-391, or both, since there was evidence to warrant the jury's finding of a violation of either section, or both. *Deshazier v. State*, 155 Ga. App. 526, 271 S.E.2d 664 (1980).

Instructions confusing to jury as to first- and second-degree vehicular homicide. — Trial court's instruction to the jury was correct, under O.C.G.A. § 40-6-393(b), as to vehicular homicide in the first degree, but was misleading as to vehicular homicide in the second degree because the instruction could have misled the jury into believing that the jury could convict the defendant of second degree vehicular homicide without finding that the defendant's violation of O.C.G.A. § 40-6-273, by failing to report an accident in which the decedent was injured when the decedent fell off a truck that the defendant was driving, caused the decedent's later death from brain injuries. *Steele v. State*, 275 Ga. App. 651, 621 S.E.2d 606 (2005).

Instruction as to degrees of crime. — Trial court's instruction on vehicular homicide was not improper; the instruction did not bar a verdict for second-degree vehicular homicide, but correctly implied that if the jury concluded that the defendant was guilty of either DUI or reckless driving, and if the jury also found the defendant guilty of vehicular homicide, it followed that the defendant must be guilty of first-degree, and not second-degree, vehicular homicide. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Contingent jury charges on first- and second-degree vehicular homicide upheld. — Trial court did not err in charging the jury on vehicular homicide, specifically explaining that if the jury found the defendant guilty of either DUI or reckless driving, and if the jury also found the defendant guilty of vehicular homicide, it followed that the defendant had to be guilty of first-degree, and not second-degree, vehicular homicide. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Sentencing

Sentencing defendant on lesser offenses when also sentenced on greater offense. — Trial court erred in sentencing the defendant on the lesser offenses of reckless driving and driving under the influence while the trial court also sentenced the defendant on the greater offense of homicide by vehicle in the first degree, which included the lesser offenses. Had the jury revealed which of the lesser offenses served as the foundation for the homicide verdict a sentence on the remaining lesser offense might have been appropriate, but as such information did not appear in the record the defendant may not be sentenced for either of the lesser included offenses of violation of O.C.G.A. §§ 40-6-390 and 40-6-391. *McNabb v. State*, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

When speeding was a direct and proximate cause of the vehicular homicide, it merged into the vehicular homicide conviction, and a separate sentence for the speeding offense was void. *Gilpatrick v. State*, 226 Ga. App. 692, 487 S.E.2d 461 (1997).

Trial court improperly treated a jury's finding of guilt on an involuntary manslaughter count as a finding of guilt on an additional homicide by vehicle count because the jury had expressly acquitted the defendant of homicide by vehicle. That conviction was properly vacated, and resentencing was required on a conviction for serious injury by vehicle. *Taylor v. State*, 286 Ga. 328, 687 S.E.2d 409 (2009).

Merger required remand for resentencing. — Because the defendant's mis-

demeanor sentence, based on the failure to exercise due care, was also based in part on convictions that merged with the reckless vehicular homicide counts, and because the trial court never vacated the defendant's convictions for the misdemeanor counts charged, the relevant portions of the defendant's sentence were vacated and the case was remanded for resentencing. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Fifteen year sentence for each homicide count. — Upon conviction of the defendant of three counts of homicide by vehicle through a violation of O.C.G.A. § 40-6-391, driving under the influence, it was not a violation of double jeopardy to sentence the defendant to 15 years for each of the homicide counts. *Cox v. State*, 243 Ga. App. 668, 533 S.E.2d 435 (2000).

Sentencing for felony conviction appropriate. — Defendant was properly sentenced for felony vehicular homicide instead of misdemeanor vehicular homicide as the evidence that the defendant was speeding and weaving through traffic, causing the accident, was sufficient to support the felony conviction. *Bell v. State*, 293 Ga. 683, 748 S.E.2d 382 (2013).

No merger of convictions. — Five convictions for serious injury by vehicle and a conviction for vehicular homicide did not merge; although the convictions stemmed from one incident of driving under the influence, there were separate victims for each offense. *Harris v. State*, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Trial court's failure to merge the defendant's convictions for driving recklessly and committing second degree vehicular homicide in violation of O.C.G.A. §§ 40-6-390 and 40-6-393, respectively, was not error for sentencing purposes as the reckless driving offense was not the underlying offense of the homicide, but rather, improper lane change was in violation of O.C.G.A. § 40-6-123(a); further, pursuant to O.C.G.A. § 16-1-6, there was no factual merger because the crimes were committed sequentially and separately. *Cutter v. State*, 275 Ga. App. 888, 622 S.E.2d 96 (2005).

Merger of convictions. — Convictions for driving under the influence of alcohol and reckless driving merged into a vehic-

Sentencing (Cont'd)

ular homicide conviction and were vacated. *Harris v. State*, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

When the defendant collided with a car, killing two of the car's occupants, two counts of DUI vehicular homicide were properly merged into two counts of reckless vehicular homicide; the defendant could be convicted only once for the death of each victim. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Defendant's reckless driving, red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant's striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. *Hill v. State*, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Time of applicability. — Provisions of O.C.G.A. § 40-6-393 which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations

occurred. All other provisions can be applied only to defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 366 et seq., 376 et seq.

Am. Jur. Trials. — Vehicular Homicide, 13 Am. Jur. Trials 295

C.J.S. — 61A C.J.S., Motor Vehicles, § 1660 et seq.

ALR. — Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 ALR 96; 93 ALR 551.

Homicide by automobile as murder, 21 ALR3d 116.

Admissibility in criminal case of blood-alcohol test where blood was taken despite defendant's objections or refusal to submit to test, 14 ALR4th 690.

Motorist's liability for striking person lying in road, 41 ALR4th 303.

Corporation's criminal liability for homicide, 45 ALR4th 1021.

Alcohol-related vehicular homicide: nature and elements of offense, 64 ALR4th 166.

40-6-393.1. Feticide by vehicle; penalties.

(a) For the purposes of this Code section, the term "unborn child" means a member of the species *homo sapiens* at any stage of development who is carried in the womb.

(b)(1) A person commits the offense of feticide by vehicle in the first degree if he or she causes the death of an unborn child by any injury to the mother of such child which would be homicide by vehicle in the first degree as provided in subsection (a), (b), or (d) of Code Section 40-6-393 if it resulted in the death of such mother.

(2) A person convicted of the offense of feticide by vehicle in the first degree shall be punished by imprisonment for not less than three years nor more than 15 years.

(c)(1) A person commits the offense of feticide by vehicle in the second degree if he or she causes the death of an unborn child by any injury to the mother of such child by violating any provision of this title other than Code Section 40-6-390 or 40-6-391, which would be homicide by vehicle in the second degree as provided in subsection (c) of Code Section 40-6-393 if it resulted in the death of such mother.

(2) A person convicted of the offense of feticide by vehicle in the second degree shall be punished as provided in Code Section 17-10-3. (Code 1981, § 40-6-393.1, enacted by Ga. L. 1991, p. 1109, § 1; Ga. L. 2006, p. 643, § 3/SB 77; Ga. L. 2008, p. 1164, § 3/SB 529.)

Editor's notes. — Ga. L. 2006, p. 643, § 5/SB 77, not codified by the General Assembly, provides that this Act shall apply to all offenses committed on or after July 1, 2006.

Ga. L. 2008, p. 1164, § 6/SB 529 not codified by the General Assembly, provides that the amendment to this Code

section shall apply to all offenses committed on or after July 1, 2008.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 27 (2006).

For note on 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 147 (1992).

JUDICIAL DECISIONS

Evidence sufficient to support conviction. — Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol, O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, O.C.G.A.

§ 40-6-391(a)(1), because the state presented evidence that the defendant had a blood-alcohol content of nearly double the legal limit at or near the time the defendant veered across three lanes of traffic and collided with a driver's pick-up truck, which resulted in the death of the driver, a passenger, and the passenger's unborn child. *Jones v. State*, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and

file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

RESEARCH REFERENCES

ALR. — Homicide based on killing of unborn child, 64 ALR5th 671.

40-6-394. Serious injury by vehicle.

Whoever, without malice, shall cause bodily harm to another by depriving him of a member of his body, by rendering a member of his body useless, by seriously disfiguring his body or a member thereof, or by causing organic brain damage which renders the body or any member thereof useless through the violation of Code Section 40-6-390

or 40-6-391 shall be guilty of the crime of serious injury by vehicle. A person convicted under this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than 15 years. (Code 1933, § 68A-903.1, enacted by Ga. L. 1979, p. 768, § 1; Ga. L. 1985, p. 758, § 18; Ga. L. 1989, p. 232, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 391, § 10.)

Cross references. — Maintenance of separate causes of action for personal injury and property damage caused by single act of wrongful or negligent operation of motor vehicle, § 51-1-32.

Editor's notes. — Ga. L. 1999, p. 391,

§ 2, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'Heidi's Law.'"

Law reviews. — For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 281 (1989).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-6-394 was not unconstitutional as applied to the defendant, who was also convicted of a DUI, when the evidence showed that a passenger in the car the defendant hit had the passenger's legs shattered in several places, had numerous surgeries, and had difficulty walking. *Pecina v. State*, 274 Ga. 416, 554 S.E.2d 167 (2001).

Construed with O.C.G.A. § 40-6-391(a)(4). — State was not required to prove that a defendant was committing any traffic violation or unsafe act, in addition to a violation of O.C.G.A. § 40-6-391(a)(4); it is sufficient that the evidence showed that the defendant's violation of § 40-6-391 caused an injury such as described in O.C.G.A. § 40-6-394. *Jones v. State*, 195 Ga. App. 569, 394 S.E.2d 387 (1990); *Moss v. State*, 209 Ga. App. 59, 432 S.E.2d 825 (1993).

No merger with reckless driving. — Trial court did not err by failing to merge a reckless-driving charge into a serious-injury-by-vehicle charge because the two crimes were entirely separate and distinct, requiring a showing of different elements and based on the defendant's drunk driving of a four-wheeler ATV with a 10-year-old passenger, who was brain-damaged when the defendant clipped a tractor and flipped the ATV; the state used the evidence of the clipping of the tractor scoop, which caused the roll-over and injury to the child, as the elements of the serious-injury-by-vehicle offense, which was separate from and

sequential to the reckless-driving offense, which was premised on the defendant's intoxication. *Croft v. State*, 278 Ga. App. 107, 628 S.E.2d 144 (2006).

Broken bones as serious disfigurement. — General demurrer to charges of serious injury by vehicle against the defendant was properly denied because whether broken bones constituted serious disfigurement under O.C.G.A. § 40-6-394 depended on the facts of the case; further, the indictment tracked the language of the statute and sufficiently advised the defendant of the charges against the defendant. *Harris v. State*, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Evidence of serious injury. — Issues of whether two-inch scar and temporary uselessness of leg sustained by automobile occupants constituted serious injuries within the meaning of O.C.G.A. § 40-6-394 were jury questions and the evidence was sufficient to support finding of such injuries. *Keef v. State*, 220 Ga. App. 134, 469 S.E.2d 318 (1996).

When the defendant pled guilty to homicide by vehicle and serious injury by vehicle, the defendant should have been allowed to withdraw the plea after defendant discovered that the state deliberately withheld exculpatory evidence regarding calculation of the defendant's speed and road conditions. *Carroll v. State*, 222 Ga. App. 560, 474 S.E.2d 737 (1996).

Evidence was sufficient to convict the defendant under O.C.G.A. § 40-6-394, although the victim's legs were not rendered permanently useless; evidence that the

victim's walking was seriously impaired was sufficient. *Adams v. State*, 259 Ga. App. 570, 578 S.E.2d 207 (2003).

Evidence showing, *inter alia*, that the victim suffered a concussion requiring transport by ambulance to the hospital, needed stitches in the victim's head, required knee surgery, and suffered injury that prevented proper function of the victim's wrist and thumb two years after the collision was sufficient to support a conviction for serious injury by vehicle. *King v. State*, 262 Ga. App. 37, 584 S.E.2d 652 (2003).

Standard is not permanently useless. — With regard to a defendant's convictions for improper lane change, serious injury by vehicle while driving under the influence, and misdemeanor obstruction of an officer, there was sufficient evidence to support the convictions based on an officer's testimony that the defendant attempted to leave the scene several times and the evidence of the defendant's vehicle passenger suffering a severe injury to the left eye. It was unnecessary to show that the passenger's eye was permanently rendered useless. *Wells v. State*, 297 Ga. App. 153, 676 S.E.2d 821 (2009).

Evidence sufficient to support conviction. — After a review of the evidence surrounding the auto accident which the defendant caused while under the influence of methamphetamine, with the defendant's four-year-old son as a passenger, and in which the defendant rear-ended the driver in front of the defendant causing that driver to become paralyzed from the neck down, when coupled with the testimony of two law enforcement officers who were at the scene and described the defendant's erratic behavior after the collision, the defendant's serious injury by vehicle, driving under the influence of methamphetamine, and endangering a child by driving under the influence convictions were supported by the evidence. *Duncan v. State*, 281 Ga. App. 270, 635 S.E.2d 875 (2006).

Sufficient evidence supported defendant's conviction for serious injury by vehicle because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a

clear plastic bottle containing 77 proof alcohol was found on the floorboard, and the defendant's blood alcohol content was 0.207 grams. *Crowe v. State*, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Relevant evidence to defendant's defense of accident. — In connection with the defendant's conviction for reckless driving, causing serious bodily injury due to reckless driving, and other crimes, the trial court abused the court's discretion in granting the state's motion in limine to exclude the defendant's evidence of the design of the intersection where the accident occurred prior to the wreck as such evidence was relevant to the defendant's defense of accident. *Dunagan v. State*, 283 Ga. 501, 661 S.E.2d 525 (2008).

Evidence of whether victim was wearing seat belt properly excluded. — As there was no duty on a police officer under O.C.G.A. § 40-6-394 to prevent or mitigate injuries that were caused by the defendant's reckless and intoxicated driving, there was no abuse of discretion in the trial court's refusal to admit evidence regarding whether the officer, who was responding to the scene of an ongoing crime, was wearing a seat belt at the time that the officer had to swerve the police cruiser in order to avoid a collision with the defendant's vehicle. *Potts v. State*, 296 Ga. App. 242, 674 S.E.2d 109 (2009).

Convictions did not merge with vehicular homicide conviction. — Five convictions for serious injury by vehicle and a conviction for vehicular homicide did not merge; although the convictions stemmed from one incident of driving under the influence, there were separate victims for each offense. *Harris v. State*, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Mutually exclusive verdict of assault on peace officer and serious injury by vehicle. — Defendant's convictions of aggravated assault on a peace officer and serious injury by vehicle based on reckless driving were mutually exclusive as it was reasonably probable that the jury found the defendant guilty of aggravated assault under O.C.G.A. § 16-5-20(a)(1) for intentionally attempting to commit a violent injury to the officer. A verdict of guilt under § 16-5-20(a)(1), requiring proof of intent,

was mutually exclusive with a verdict of guilt as to serious injury by vehicle predicated on reckless driving. *Dryden v. State*, 285 Ga. 281, 676 S.E.2d 175 (2009).

Video tape depicting the rehabilitation of a victim was not inflammatory and unduly prejudicial in that the videotape illustrated the extent of the victim's injuries which is necessary under O.C.G.A. § 40-6-394. *Dudley v. State*, 204 Ga. App. 327, 419 S.E.2d 138 (1992).

Double jeopardy and DUI. — Proof that the defendant was guilty of driving under the influence (DUI) under O.C.G.A. § 40-6-391 was a required element for convicting the defendant of serious injury by vehicle under O.C.G.A. § 40-6-394, and while proof of serious injury by vehicle also required proof of an additional element, bodily harm, the DUI charge included no element that was not also contained in the crime of serious injury by vehicle; accordingly, the Blockburger test was not met, and the subsequent indictment for serious injury by vehicle violated the double jeopardy clause of the Fifth Amendment. Thus, the defendant's plea in bar was a valid exercise of the federal double jeopardy clause. *Garrett v. State*, 306 Ga. App. 429, 702 S.E.2d 470 (2010).

Jury instructions. — Jury instruction defining the offense of serious injury by vehicle that listed as an element disfigurement to the victim's "body or a member thereof" did not require the defendant to defend against an allegation of which the indictment had not provided the defendant with notice; furthermore, when the final charge was viewed as a whole, there was no reasonable probability that the cited language confused or misled the jury. *Karafiat v. State*, 290 Ga. App. 15, 658 S.E.2d 801 (2008).

Mistrial was properly denied. — Defendant was not prejudiced by a challenged juror's conduct in communicating with a state witness, namely, a police officer as: (1) the alleged improper communication was innocent; (2) the case was never discussed; and (3) once the involvement was discovered, the conversation immediately ended; hence, the trial court did not abuse the court's discretion in denying a mistrial. *Duncan v. State*, 281 Ga. App. 270, 635 S.E.2d 875 (2006).

Appearance of victim before jury. — It was not error for the trial court to allow the victim, who had been left a quadriplegic by a collision with the defendant, to appear before the jury so that the state could show the extent of the victim's injuries as required under O.C.G.A. § 40-6-394. *Dunagan v. State*, 286 Ga. App. 668, 649 S.E.2d 765 (2007), reversed on other grounds, 283 Ga. 501, 661 S.E.2d 525 (2008).

Jury question as to whether victim died on impact. — Conviction for serious injury by vehicle was not void as the resolution of whether the victim died immediately upon impact was for the jury. *Taylor v. State*, 295 Ga. App. 689, 673 S.E.2d 7 (2009), *aff'd*, 286 Ga. 328, 687 S.E.2d 409 (2009).

Sentence improper. — Given that a charge of DUI served as the predicate act underlying a charge of serious injury by vehicle, thus constituting a lesser included crime of the serious injury by vehicle, O.C.G.A. § 16-1-7(a) barred conviction of and punishment for both; hence, in light of this incongruence, the defendant's DUI conviction and sentence, as well as the sentence for serious injury by vehicle, were vacated. *Hannah v. State*, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 356, 361.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1574 et seq. 1597, 1607, 1623 et seq.

ALR. — Motorist's liability for striking person lying in road, 41 ALR4th 303.

40-6-395. Fleeing or attempting to elude police officer; impersonating law enforcement officer.

(a) It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform prominently displaying his or her badge of office, and his or her vehicle shall be appropriately marked showing it to be an official police vehicle.

(b)(1) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a high and aggravated misdemeanor and:

(A) Upon conviction shall be fined not less than \$500.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than ten days nor more than 12 months. Any period of such imprisonment in excess of ten days may, in the sole discretion of the judge, be suspended, stayed, or probated;

(B) Upon the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than \$1,000.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 30 days nor more than 12 months. Any period of such imprisonment in excess of 30 days may, in the sole discretion of the judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of nolo contendere accepted within such ten-year period shall constitute convictions; and

(C) Upon the third or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than \$2,500.00 nor more than \$5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 90 days nor more than 12 months. Any period of such imprisonment in excess of 90 days may, in the sole discretion of the judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of nolo contendere accepted within such ten-year period shall constitute convictions.

(2) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction.

(3) If the payment of the fine required under paragraph (1) of this subsection will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this subsection.

(4) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishments provided for in this subsection upon a conviction of violating this subsection or upon conviction of violating any ordinance adopting the provisions of this subsection.

(5)(A) Any person violating the provisions of subsection (a) of this Code section who, while fleeing or attempting to elude a pursuing police vehicle or police officer:

(i) Operates his or her vehicle in excess of 20 miles an hour above the posted speed limit;

(ii) Strikes or collides with another vehicle or a pedestrian;

(iii) Flees in traffic conditions which place the general public at risk of receiving serious injuries;

(iv) Commits a violation of paragraph (5) of subsection (a) of Code Section 40-6-391; or

(v) Leaves the state

shall be guilty of a felony punishable by a fine of \$5,000.00 or imprisonment for not less than one year nor more than five years or both.

(B) Following adjudication of guilt or imposition of sentence for a violation of subparagraph (A) of this paragraph, the sentence shall not be suspended, probated, deferred, or withheld, and the charge shall not be reduced to a lesser offense, merged with any other offense, or served concurrently with any other offense.

(c) It shall be unlawful for a person:

(1) To impersonate a sheriff, deputy sheriff, state trooper, agent of the Georgia Bureau of Investigation, agent of the Federal Bureau of Investigation, police officer, or any other authorized law enforcement officer by using a motor vehicle or motorcycle designed, equipped, or marked so as to resemble a motor vehicle or motorcycle belonging to any federal, state, or local law enforcement agency; or

(2) Otherwise to impersonate any such law enforcement officer in order to direct, stop, or otherwise control traffic. (Code 1933, § 68A-904, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483,

§ 2; Ga. L. 1983, p. 836, § 1; Ga. L. 1985, p. 758, § 19; Ga. L. 1987, p. 3, § 40; Ga. L. 1990, p. 585, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 6, § 40; Ga. L. 1994, p. 831, § 3; Ga. L. 1995, p. 855, § 2; Ga. L. 2004, p. 450, § 1; Ga. L. 2010, p. 256, § 2/HB 1231; Ga. L. 2012, p. 729, § 1/HB 827.)

The 2012 amendment, effective July 1, 2012, in the first sentence of subparagraphs (b)(1)(A), (b)(1)(B), and (b)(1)(C), substituted “and the fine” for “which fine”, and inserted a comma after “suspension, stay, or probation”; and deleted “in an attempt to escape arrest for any offense, other than a violation of this chapter not expressly provided for in this paragraph” following “police officer” in subparagraph (b)(5)(A). See editor’s note for applicability.

Cross references. — Impersonating public officer or employee generally, § 16-10-23. Suspension of driver’s license for conviction for fleeing or attempting to elude officer, § 40-5-54.

Editor’s notes. — Ga. L. 2010, p. 256,

§ 5/HB 1231, not codified by the General Assembly, provides that the amendment by that Act shall apply to all offenses committed on or after July 1, 2010.

Ga. L. 2012, p. 729, § 2/HB 827, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to offenses committed on or after July 1, 2012.

Law reviews. — For article, “Criminal Law,” see 53 Mercer L. Rev. 209 (2001). For annual survey of criminal law, see 56 Mercer L. Rev. 153 (2004). For article, “Police Pursuits: A Comprehensive Look at the Broad Spectrum of Police Pursuit Liability and Law,” see 57 Mercer L. Rev. 511 (2006).

JUDICIAL DECISIONS

Constitutionality. — Statute was not unconstitutional for failing to include a provision for the exercise of self defense, given the statutory defense that a person’s conduct was justified remained a defense to prosecution for any crime based on that conduct; moreover, the defendant was permitted to present justification evidence, and the trial court instructed the jury that justification was a defense and could be claimed when the person’s conduct was justified for any reason under the law or in all other instances based on similar reason and justice. *Harbuck v. State*, 280 Ga. 775, 631 S.E.2d 351 (2006).

Offenses under subsections (a) or (b) of former Code 1933, § 68A-904 are purely statutory and have no relation to the common law. *State v. Black*, 149 Ga. App. 389, 254 S.E.2d 506 (1979) (see O.C.G.A. § 40-6-395).

Subject matter jurisdiction. — Inasmuch as it was established that a violation of O.C.G.A. § 40-6-395 was alleged to have occurred in Douglas County, Georgia, the state court of Douglas County had subject-matter jurisdiction over the case;

thus, the denial of the defendant’s motion in arrest of judgment was not error. *Harbuck v. State*, 280 Ga. 775, 631 S.E.2d 351 (2006).

Pleas and violations of double jeopardy. — Subsequent prosecution of the defendant for robbery after the defendant pled guilty to fleeing to elude did not violate double jeopardy since the offenses involved wholly different elements and facts. *Blackwell v. State*, 230 Ga. App. 611, 496 S.E.2d 922 (1998).

Even assuming *arguendo* that the defendant’s position that O.C.G.A. § 40-6-395 set out two distinct offenses, wilful failure to stop and fleeing and eluding a police officer, the defendant was tried, first in a bench trial and again on remand after an appeal, on an accusation charging the defendant with fleeing and eluding an officer and was found guilty and sentenced both times for fleeing and eluding; hence, because the defendant was not tried on the offense of wilful failure to stop, the defendant’s contention that double jeopardy considerations prohibited a jury trial on that charge was

moot. *Harbuck v. State*, 280 Ga. 775, 631 S.E.2d 351 (2006).

Counts did not merge. — Two counts of eluding an officer against a defendant, who was a passenger in a truck, did not factually merge as in the first count, the defendant eluded the officer by being in a truck that exceeded the posted speed limit by at least 30 mph while an officer was chasing the truck, when the officer clocked the vehicle as exceeding 100 miles per hour in a 55-miles-per-hour zone; the first count was separate and complete prior to the truck's driver running a red light and endangering the crossing vehicle in the driver's efforts to elude the police, which was the basis for the second count of eluding an officer. *Michael v. State*, 281 Ga. App. 289, 635 S.E.2d 790 (2006).

Although offenses related to the getaway car were part of the same criminal episode, the essential elements of armed robbery, theft by receiving, fleeing or attempting to elude a police officer, and reckless driving were completely separate and distinct. As a result, the trial court did not err in failing to merge these offenses. *Garibay v. State*, 290 Ga. App. 385, 659 S.E.2d 775 (2008).

Trial court properly sentenced the defendant on five separate counts of attempting to elude a police officer because the evidence supported the jury's conclusion that the defendant willfully led police on a dangerous high speed chase after being given clear signals by five separate police vehicles to stop; it is the act of fleeing from an individual police vehicle or police officer after being given a proper visual or audible signal to stop from that individual police vehicle or officer, and not just the act of fleeing itself, that forms the proper "unit of prosecution" under O.C.G.A. § 40-6-395. *Smith v. State*, 290 Ga. 768, 723 S.E.2d 915 (2012).

Merger with felony murder. — Defendant's conviction for felony fleeing and attempting to elude was vacated as the offense served as the underlying felony for a felony murder conviction and merged with the conviction for felony murder. *Ferguson v. State*, 280 Ga. 893, 635 S.E.2d 144 (2006).

Identification of officer. — No violation of subsection (a) of O.C.G.A.

§ 40-6-395 is shown unless evidence demonstrates that the officer allegedly eluded was in required uniform and that the officer's vehicle was appropriately marked. *Phillips v. State*, 162 Ga. App. 471, 291 S.E.2d 776 (1982).

Evidence that the law enforcement officer displayed a variety of objective indicia of the officer's lawful authority was sufficient to authorize the jury's determination that the defendant was unlawfully attempting to elude the officer's. *Mooney v. State*, 221 Ga. App. 420, 471 S.E.2d 904 (1996).

State's failure to present evidence of the officer's attire was harmless when the jury was considering whether an individual driving 131 mph in the dark, early in the morning hours was aware that the individual was being pursued by a peace officer. *Ray v. State*, 233 Ga. App. 162, 503 S.E.2d 391 (1998).

Applicability to uniformed officers on foot. — When a defendant failed to stop after being given a signal to do so by a police officer on foot and in uniform, the defendant violated O.C.G.A. § 40-6-395, and therefore the evidence was sufficient to support the defendant's conviction for fleeing and attempting to elude; § 40-6-395 did not apply only when an officer was in a police vehicle and not on foot, as was the factual circumstances involving the defendant, because to read § 40-6-395 to mean only a police officer on foot would render the phrase "pursuing police vehicle" in the first sentence of § 40-6-395 meaningless, and a court was prohibited from interpreting a statute in this manner. *Maxwell v. State*, 282 Ga. 22, 644 S.E.2d 822 (2007).

One signal given by police enough. — Intent of the legislature was to require only one form of recognizable signal, either visual or audible. *Reynolds v. State*, 209 Ga. App. 628, 434 S.E.2d 166 (1993).

Defendant's conviction for eluding the police was reversed as a fair risk could not have been excluded (due to the unexplained ambiguity appearing in the face of O.C.G.A. § 40-6-395 at the time of the offense) that the driver could have labored under a mistaken belief that merely because a second signal was not given the defendant was free wilfully to elude police

pursuit without fear of criminal sanction. *Reynolds v. State*, 209 Ga. App. 628, 434 S.E.2d 166 (1993).

Applicability to passengers. — Not only a driver can be found guilty of violating O.C.G.A. § 40-6-395; the evidence may show that the driver and the passenger acted in concert between themselves in an effort to effect an unlawful escape from the police. *Bivins v. State*, 166 Ga. App. 580, 305 S.E.2d 29 (1983).

When the defendant was only a passenger in a van during a high speed chase with police and was not the driver, and there was no evidence that the defendant did anything other than occupy the passenger seat while a codefendant drove the van, the trial court erred by denying the defendant's motion for a directed verdict on the charge of fleeing from police. *Carter v. State*, 249 Ga. App. 354, 548 S.E.2d 102 (2001).

Sufficiency of accusation. — Amended accusation charging that the defendant "did wilfully fail to stop and did otherwise fleeing or attempting to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop in violation of this section" sufficiently apprised the defendant of the charges against the defendant. *Reed v. State*, 205 Ga. App. 209, 422 S.E.2d 15, cert. denied, 205 Ga. App. 901, 422 S.E.2d 15 (1992).

Grant of the defendant's special demurrer to counts which charged the defendant with fleeing or attempting to elude a police officer was proper because the offense charged could have been committed by the defendant's failure to respond to a visual signal of the officer either by hand or by emergency light and the accusation did not allege which type of visual signal was given. *State v. Jones*, 246 Ga. App. 482, 540 S.E.2d 622 (2000).

Charges that the defendant violated O.C.G.A. § 40-6-395(a) by willfully failing or refusing to bring the defendant's vehicle to a stop or otherwise fled or attempted to elude a pursuing police officer when given a visual or audible signal to bring the vehicle to a stop, and that the defendant violated O.C.G.A. § 16-10-24(a) by knowingly and willfully obstructing or hindering the officer in the lawful dis-

charge of the officer's duties by refusing to follow the officer's reasonable and lawful commands, were not mutually exclusive, as the crimes had different elements and neither guilty verdict legally or logically excluded the other. *Golden v. State*, 276 Ga. App. 538, 623 S.E.2d 727 (2005).

Trial court did not err in denying the defendant's motion in arrest of judgment as to the count of fleeing and attempting to elude police because the indictment charged that the defendant unlawfully willfully failed to bring a vehicle to a stop after having been given an audible and visual signal to bring the vehicle to a stop by an officer while fleeing in an attempt to escape arrest for theft by receiving and did flee in traffic conditions which placed the general public at risk of receiving serious injuries in violation of O.C.G.A. § 40-6-395. *Dixson v. State*, 313 Ga. App. 379, 721 S.E.2d 555 (2011).

Indictment charging the defendant with eluding police was not fatally defective because the indictment did not contain the term "pursuing"; the indictment provided sufficient notice of the charge against the defendant. *Jackson v. State*, 284 Ga. App. 619, 644 S.E.2d 491 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. 2007).

Indictment charging the defendant with "fleeing or attempting to elude," alleging that the defendant unlawfully and willfully failed to bring the defendant's vehicle to a stop after a pursuing police officer gave a visual and audible signal, was sufficient to withstand a general demurrer. *State v. Wilson*, 318 Ga. App. 88, 732 S.E.2d 330 (2012).

Sufficient evidence of venue. — Even though a chase involving the defendant might have ended in another county, because the offense of eluding the officers was complete at the moment the defendant refused to stop, despite the visual and audible signals requiring such, the defendant's act of continuing the chase into that second county did not destroy venue in the county where the chase began; moreover, after the defendant wrecked the vehicle involved in the chase in the second county, the evidence gathered at the scene was sufficient to support the inference that the open beer contain-

ers were in the vehicle when the defendant was observed driving the vehicle moments earlier in the county where the chase began. *Mack v. State*, 283 Ga. App. 172, 641 S.E.2d 194 (2007).

Indictment charging the defendant with felony fleeing and attempting to elude a police officer was defective as the indictment failed to list any predicate offense as required by O.C.G.A. § 40-6-395(b)(5)(A); nowhere was the predicate offense mentioned of fleeing in traffic conditions such that the general public was placed at risk of serious injuries. *Cochran v. State*, 288 Ga. App. 538, 654 S.E.2d 458 (2007).

As there was evidence the defendant was speeding and eluding a police officer in Dawson County, venue was established there, even though the defendant was apprehended in Forsyth County. *Segel v. State*, 293 Ga. App. 506, 667 S.E.2d 670 (2008).

Insufficient evidence of venue. — State failed to present evidence of venue necessary for a fleeing and eluding conviction, as the testimony merely identified streets, but did not indicate the counties in which the chase or shooting took place. *Grant v. State*, 326 Ga. App. 121, 756 S.E.2d 255 (2014).

Investigatory stop. — Because police officers saw a vehicle matching a dispatcher's description shortly after receiving the dispatch, and the vehicle attempted to elude the officers, in violation of O.C.G.A. § 40-6-395(a), the officers had a specific and articulable reason to stop the vehicle; consequently, the trial court properly denied the defendant's motions to suppress, in limine, and for a new trial. *Francis v. State*, 275 Ga. App. 164, 620 S.E.2d 431 (2005).

Since the defendant ignored the officers' commands during an investigatory stop based on a tipster's report of illegal drug activity, fled from the scene, and led the officers on a chase in violation of O.C.G.A. § 40-6-395(a), any taint arising from the allegedly illegal stop was purged and the defendant's flight provided a legitimate basis for discovery of evidence in the defendant's car. *Prather v. State*, 279 Ga. App. 873, 633 S.E.2d 46 (2006).

Illegal Terry stop does not provide carte blanche to violate O.C.G.A.

§ 40-6-395. *Davis v. State*, 235 Ga. App. 10, 507 S.E.2d 827 (1998).

Officer waving a car to a stop was not a Terry stop by virtue of O.C.G.A. § 40-6-395. — A DUI defendant was not forced to stop by a police officer who waved the defendant down by virtue of O.C.G.A. § 40-6-395 because the officer told the defendant that the defendant was free to go and there was no pursuit involved. *Butler v. State*, 303 Ga. App. 564, 694 S.E.2d 168 (2010).

Probable cause to arrest for violation. — In an arrestee's 42 U.S.C. § 1983 suit alleging that that the arrestee was falsely arrested in violation of U.S. Const., amend. IV the arresting officer was entitled to qualified immunity because actual probable cause to affect the arrestee's arrest for violating O.C.G.A. § 40-6-395(c) existed after police received a citizen call about a civilian car using police-like strobe lights, the arrestee's car matched the citizen's description, the officer saw the arrestee activate strobe lights on the arrestee's car, and the officer found a strobe light switch box in the car. *Baker v. Moskau*, 335 Fed. Appx. 864 (11th Cir. 2009) (Unpublished).

No audible signal given. — When indictment charged the defendant with attempting to elude "after having been given visual and audible signal to bring the vehicle to a stop" but, at trial, the arresting officer testified that the officer used only visual signals, the state failed to prove the signal was given in the manner alleged, and the evidence was insufficient to support the charge as made in the indictment. *Little v. State*, 202 Ga. App. 7, 413 S.E.2d 496 (1991).

Offenses of fleeing and eluding not merged with suspended license violation. — Convictions under both O.C.G.A. §§ 40-5-58(c) and 40-6-395(b)(5)(A) were proper under O.C.G.A. § 16-1-6 as the elements of both charged offenses required different proof. Under O.C.G.A. § 40-5-58(c), the state proved that the defendant was declared an habitual violator, was properly notified of such status, and that the defendant operated a vehicle without having obtained a valid driver's license; while under O.C.G.A. § 40-6-395(b)(5)(A), proof that the driver

committed a misdemeanor while fleeing or attempting to elude, that the driver was trying to escape arrest for a felony offense other than road violations, and that the driver committed one of the statutorily enumerated acts was required. *Buggay v. State*, 263 Ga. App. 520, 588 S.E.2d 244 (2003).

Indictment for felony murder and vehicular homicide. — Defendant could be indicted for vehicular homicide under O.C.G.A. § 40-6-393 and felony murder during the commission of fleeing and attempting to elude a police officer under O.C.G.A. § 40-6-395. *State v. Tiraboschi*, 269 Ga. 812, 504 S.E.2d 689 (1998).

Charge predicate to felony murder. — Charge under O.C.G.A. § 40-6-395 of fleeing and attempting to elude a police officer served as a predicate to felony murder. *State v. Tiraboschi*, 269 Ga. 812, 504 S.E.2d 689 (1998).

Dual prosecution valid, but sentencing merged. — Defendant could be lawfully prosecuted for both O.C.G.A. § 40-6-395(a) and (b)(5)(A) without offending O.C.G.A. § 16-1-7(a), although the defendant could not be sentenced for both; the court found that because all of the evidence was used up to prove the crime of felony fleeing or attempting to elude, the misdemeanor conviction for fleeing or attempting to elude merged into the greater offense. *Buggay v. State*, 263 Ga. App. 520, 588 S.E.2d 244 (2003).

Conviction upheld. — Defendant was properly convicted of a charge of attempting to elude a police officer when the evidence showed that the officer was on patrol and in the officer's patrol car and had the officer's blue light flashing and siren sounding. *Cook v. State*, 180 Ga. App. 877, 350 S.E.2d 847 (1986).

Evidence was sufficient to support the conviction of the defendant, notwithstanding that a videotape recorded by a video camera in the arresting officer's patrol car indicated that the defendant's vehicle disappeared from the officer's view as the officer completed a U-turn and had already come to a stop by the time the officer made a left turn into a commercial complex, since the officer testified that the defendant was the driver of the vehicle and that the defendant attempted to elude

the pursuing police officer through the defendant's actions and denials after the defendant brought the defendant's vehicle to a stop. *Turner v. State*, 236 Ga. App. 592, 512 S.E.2d 699 (1999).

Defendant's conviction under O.C.G.A. § 40-6-395 was upheld as: (1) the conviction was supported by sufficient evidence of the defendant's failure to yield to an uniformed police officer driving a marked police vehicle when commanded to do so; (2) the issue as to whether a failure to stop was wilful was a question for the jury upon consideration of the words, conduct, demeanor, motive, and all other circumstances connected with the act; (3) a motion to quash the accusation contested the authenticity of the state's evidence and did not attack the accusation for a facial defect, thus making denial of the motion proper; (4) the pursuing officer was not called upon to exercise the legislative function of defining what constituted a crime, but the executive branch function of enforcing the law; (5) there was no constitutional requirement that the statute had to contain a statement that a justification defense be asserted; (6) the State Court of Douglas County had subject-matter jurisdiction over the case; and (7) since the defendant was not found guilty of a wilful failure to stop, a contention that the defendant could not be tried for the offense was moot. *Harbuck v. State*, 280 Ga. 775, 631 S.E.2d 351 (2006).

Given evidence from an ensuing police officer identifying the defendant as the driver of the vehicle stopped, and because the jury was the judge of the credibility of the witnesses presented at trial, and was authorized the reject the defendant's alibi defense, sufficient evidence was presented to support the defendant's convictions for reckless driving, failure to maintain a lane, driving with defective equipment, fleeing or attempting to elude a police officer, and obstruction of a police officer. *Daniel v. State*, 282 Ga. App. 291, 638 S.E.2d 430 (2006).

Because sufficient direct and circumstantial evidence showed that the defendant, a prior felon wielding a weapon, engaged in a fight with the two victims, fatally wounding one and shooting the other in the arm, and thereafter fled from

police, the defendant's convictions for involuntary manslaughter, reckless conduct, fleeing and eluding, and possession of a firearm by a convicted felon were upheld on appeal. *Alvin v. State*, 287 Ga. App. 350, 651 S.E.2d 489 (2007).

Evidence was sufficient to support the defendant's convictions for trafficking in cocaine, possession of a firearm during the commission of a felony, possession of a firearm by a convicted felon, and felony fleeing or attempting to elude based on the defendant's involvement in a police chase that included speeds in excess of 100 m.p.h. in a residential area and the defendant's attempt to flee on foot. *Hinton v. State*, 297 Ga. App. 565, 677 S.E.2d 752 (2009).

Evidence was sufficient to support the defendant's conviction for fleeing from an officer since the defendant admitted to being the driver of the vehicle and that the defendant "freaked out" when co-defendant returned to the car indicating that a fast food restaurant robbery had taken place and police sirens were heard, so the defendant "hit the gas" when a sergeant pulled behind the vehicle. *Broyard v. State*, 325 Ga. App. 794, 755 S.E.2d 36 (2014).

Evidence sufficient. — There was evidence sufficient to convince any rational trier of fact of the existence of the essential elements of the crime of attempting to elude an officer. *Hassell v. State*, 212 Ga. App. 432, 442 S.E.2d 261 (1994); *Finlon v. State*, 228 Ga. App. 213, 491 S.E.2d 458 (1997); *Davidson v. State*, 237 Ga. App. 580, 516 S.E.2d 90 (1999); *Gibson v. State*, 243 Ga. App. 610, 533 S.E.2d 783 (2000).

Evidence that the arresting officer was uniformed and driving a marked patrol car and that the defendant fled after a license check had been completed supported the defendant's conviction. *Davis v. State*, 235 Ga. App. 10, 507 S.E.2d 827 (1998).

Evidence was sufficient to prove that the defendant was guilty of reckless driving and attempting to elude an officer when the defendant led the officer on a high speed chase driving on the wrong side of the road and wilfully failed to bring the defendant's car to a stop after the officer activated the patrol car's blue

lights and siren. *Brackins v. State*, 249 Ga. App. 788, 549 S.E.2d 775 (2001).

Evidence authorized the trial court to find beyond a reasonable doubt that the defendant attempted to elude a police officer under O.C.G.A. § 40-6-395(a) as the defendant wilfully failed and refused to bring the vehicle to a stop when given visual and audible signals to do so. *Weir v. State*, 257 Ga. App. 387, 571 S.E.2d 191 (2002).

Convictions for armed robbery, aggravated assault, fleeing to elude a police officer, and reckless driving were all upheld on appeal given the sufficiency of the identification evidence supplied by the victim, an investigating officer, and the arresting officer, as well as observations made by the latter in apprehending the defendant; moreover, the defendant's failure to object to the admission of a photographic lineup and show-up as impermissibly suggestive precluded appellate review of those issues. *Newton v. State*, 280 Ga. App. 709, 634 S.E.2d 839 (2006).

Evidence supported a defendant's convictions for fleeing and attempting to elude a police officer as an underlying offense for felony murder, theft by taking, vehicular homicide, disregarding a traffic control device, failing to stop at a stop sign, and reckless driving as: (1) the defendant stole a vehicle and was spotted by an officer shortly after the vehicle was reported as stolen; (2) when the officer began to follow the vehicle, the vehicle rapidly accelerated; (3) the officer followed the stolen vehicle for several blocks, with both vehicles traveling between 60-70 miles per hour; (4) the vehicle continued to accelerate after the officer turned on the officer's blue lights and siren; (5) when the stolen vehicle ran a red light, the vehicle struck a car, killing the driver; and (6) the officer and the owner of the stolen vehicle identified the defendant as the person driving the stolen vehicle. *Ferguson v. State*, 280 Ga. 893, 635 S.E.2d 144 (2006).

Evidence supported a defendant's conviction of bringing stolen property to Georgia, eluding an officer, and possessing marijuana as a party, if not as a conspirator, since: (1) the defendant discussed with the defendant's boyfriend what would happen if they were apprehended

by the police; (2) the boyfriend gave the defendant a handgun after the boyfriend stole a new gun and the defendant packed two guns with the defendant's personal items and the ski masks; (3) the defendant suspected that the truck was stolen, refused to ask about the truck's origin, saw the stolen gun on the seat of the truck, observed two gas drive-offs, ate stolen food, smoked shared marijuana repeatedly, and sat next to the glove compartment where the marijuana lay; and (4) the defendant was silent during the police pursuits, saw the defendant's boyfriend retrieve a stolen handgun just prior to an assault of a police officer, did not hinder the boyfriend or warn the police, lied to the police to cover up the matter, and referred to the entire affair as having "fun for a minute." *Michael v. State*, 281 Ga. App. 289, 635 S.E.2d 790 (2006).

There was sufficient evidence to convict the defendants of fleeing or attempting to elude a police officer in violation of O.C.G.A. § 40-6-395(a); both of the defendants, along with the driver, fled after the vehicle in which they were riding crashed, and, as a result, the defendants, by fleeing with the driver, became chargeable as parties to the crime. *Cooper v. State*, 281 Ga. App. 882, 637 S.E.2d 480 (2006).

There was sufficient evidence to support a defendant's conviction for fleeing and eluding the police based on the defendant, after panicking from striking a vehicle in a nightclub parking lot, testifying at trial that the defendant attempted to flee to avoid arrest for driving under the influence and for striking the parked car. *Adams v. State*, 293 Ga. App. 377, 667 S.E.2d 186 (2008).

Evidence that the defendant eluded police at 75 miles per hour (mph) in a 25 mph zone, ran several stop signs, abandoned the car, and fled on foot was sufficient to convict the defendant of fleeing and attempting to elude in violation of O.C.G.A. § 40-6-395(a). *Bridges v. State*, 293 Ga. App. 783, 668 S.E.2d 293 (2008).

Evidence that a defendant gave a fake name and address, sped from the scene of a traffic stop, abandoned the truck, and continued to run from, hide from, and fight with police was more than sufficient to support convictions for misdemeanor

obstruction of a police officer in violation of O.C.G.A. § 16-10-24(a) and fleeing or attempting to elude in violation of O.C.G.A. § 40-6-395(a). *Lightsey v. State*, 302 Ga. App. 294, 690 S.E.2d 675 (2010).

Because the defendant chose to run away from a traffic stop, a police officer had probable cause to arrest the defendant for fleeing or attempting to elude a police officer; voluntarily throwing a digital scale and a baggie of suspected cocaine to the sidewalk near parking spaces within an apartment complex demonstrated an abandonment of the items. *State v. Nesbitt*, 305 Ga. App. 28, 699 S.E.2d 368 (2010).

Evidence was sufficient to find the defendant guilty beyond a reasonable doubt of two counts of fleeing and attempting to elude a police officer because officers pursued the defendant's fleeing vehicle in a high-speed chase in patrol vehicles clearly marked with their emergency lights and sirens activated; despite those warnings, the defendant ran a stop sign and a red light and refused to stop the defendant's vehicle until "stop sticks" disabled the defendant's vehicle. *Tauch v. State*, 305 Ga. App. 643, 700 S.E.2d 645 (2010).

Evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-395(a) and (b)(5)(A), 40-6-270(a), and 40-6-271(a), when the defendant refused to stop a vehicle for two bicycle-patrol uniformed officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle. *Fairwell v. State*, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Evidence that the defendant traveled 0.7 miles before stopping after the officers engaged the emergency lights and siren on the patrol car, passing a number of safe locations to stop, supported the defendant's conviction for fleeing and attempting to elude. *King v. State*, 317 Ga. App. 834, 733 S.E.2d 21 (2012).

Evidence insufficient for conviction. — *Johnson v. State*, 246 Ga. App. 197, 540 S.E.2d 212 (2000).

Evidence was not sufficient to sustain the defendant's conviction for fleeing and attempting to elude police because the state charged the defendant with striking or colliding with another vehicle while the defendant was attempting to elude police, but there was no evidence that a vehicle the defendant drove struck or collided with another vehicle. *James v. State*, 265 Ga. App. 689, 595 S.E.2d 364 (2004).

Given evidence that the pursuing officer failed to activate the blue emergency lights, and no evidence was presented that the officer gave any other signal to communicate to the driver of the pursued vehicle of the requirement for that driver to stop, the defendant's conviction under O.C.G.A. § 40-6-395(a) was reversed. *Bradford v. State*, 287 Ga. App. 50, 651 S.E.2d 356 (2007).

Because the defendant complied with a deputy's signal to stop a vehicle and the deputy did not arrest the defendant or instruct the defendant to remain at the scene while the officer chased a wanted person, the defendant's subsequent flight from the scene did not equate to fleeing pursuit by an officer under O.C.G.A. § 40-6-395(a); accordingly, the trial court erred in denying the defendant's motion for a directed verdict of acquittal. *Bledson v. State*, 294 Ga. App. 772, 670 S.E.2d 223 (2008).

Evidence insufficient to support felony conviction. — Evidence was sufficient to support the defendant's guilty verdict as to misdemeanor fleeing and eluding, in violation of O.C.G.A. § 40-6-395, but the evidence was insufficient to show that there were traffic conditions that placed the general public at risk of serious injury to support the defendant's conviction for felony fleeing and eluding. *Hicks v. State*, 321 Ga. App. 773, 743 S.E.2d 458 (2013).

Evidence insufficient for arrest. — Because the circumstances of the defendant's low-speed flight from an uniformed detective, who was driving an unmarked vehicle, were insufficient to present law enforcement with evidence of a particular crime, the defendant could not be charged with the crime of attempting to elude an officer, and police lacked the probable cause sufficient to warrant an arrest for

the offense; thus, the search incident to the arrest was invalid, warranting suppression of the evidence seized. *Stephens v. State*, 278 Ga. App. 694, 629 S.E.2d 565 (2006).

Directed verdict motion properly denied. — In a case involving charges of obstruction of an officer and attempting to elude, a motion for directed verdict was properly denied since the officer was investigating the defendant for driving under the influence and the defendant did not respond to the officer's orders and forced the officer to get a warrant to effectuate an arrest. *Reed v. State*, 205 Ga. App. 209, 422 S.E.2d 15, cert. denied, 205 Ga. App. 901, 422 S.E.2d 15 (1992).

Mandatory sentence. — Because O.C.G.A. § 40-6-395 imposed a minimum sentence of 10 days upon conviction of fleeing or attempting to elude a police officer, the trial court erred in failing to sentence a defendant to the mandatory minimum incarceration. *State v. Searcy*, 277 Ga. App. 642, 627 S.E.2d 210 (2006).

Cited in *Snell v. McCoy*, 135 Ga. App. 832, 219 S.E.2d 482 (1975); *State v. Edwards*, 236 Ga. 104, 222 S.E.2d 385 (1976); *Torley v. State*, 141 Ga. App. 366, 233 S.E.2d 476 (1977); *Brock v. State*, 146 Ga. App. 78, 245 S.E.2d 442 (1978); *McSears v. State*, 247 Ga. 48, 273 S.E.2d 847 (1981); *Hill v. State*, 159 Ga. App. 589, 284 S.E.2d 92 (1981); *Lester v. State*, 253 Ga. 235, 320 S.E.2d 142 (1984); *Freeman v. State*, 194 Ga. App. 905, 392 S.E.2d 330 (1990); *Cabral v. State*, 199 Ga. App. 557, 405 S.E.2d 556 (1991); *Jackson v. State*, 223 Ga. App. 27, 477 S.E.2d 28 (1996); *English v. State*, 261 Ga. App. 157, 582 S.E.2d 136 (2003); *State v. Stilley*, 261 Ga. App. 868, 584 S.E.2d 9 (2003); *Faulkner v. State*, 277 Ga. App. 702, 627 S.E.2d 423 (2006); *Jaheni v. State*, 285 Ga. App. 266, 645 S.E.2d 735 (2007); *Leachman v. State*, 286 Ga. App. 708, 649 S.E.2d 886 (2007); *McClendon v. State*, 287 Ga. App. 238, 651 S.E.2d 165 (2007); *Green v. State*, 287 Ga. App. 248, 651 S.E.2d 174 (2007); *Francis v. State*, 287 Ga. App. 428, 651 S.E.2d 779 (2007); *Segel v. State*, 293 Ga. App. 506, 667 S.E.2d 670 (2008); *Westmoreland v. State*, 287 Ga. 688, 699 S.E.2d 13 (2010); *Myers v. State*, 311 Ga. App. 668, 716 S.E.2d 772 (2011); *Russell v. State*, 319 Ga. App. 472, 735 S.E.2d 797 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Elements required to determine if cases are felonies requiring transfer to superior court. 1996 Op. Att'y Gen. No. U96-7.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1514 et seq.

ALR. — What conduct in driving an automobile amounts to wantonness, wilfulness, or the like, precluding defense of contributory negligence, 119 ALR 654.

Automobiles: liability of one fleeing police for injury resulting from collision of police vehicle with another vehicle, person or object, 51 ALR3d 1226.

40-6-396. Homicide by interference with official traffic-control device or railroad sign or signal; serious injury by interference with official traffic-control device or railroad sign or signal.

(a) Any person who, without malice aforethought, causes the death of another person through the violation of subsection (a) of Code Section 40-6-26 commits the offense of homicide by interference with an official traffic-control device or railroad sign or signal and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than 15 years.

(b) Any person who, without malice aforethought, causes bodily harm to another by depriving such other person of a member of his or her body, by rendering a member of his or her body useless, by seriously disfiguring his or her body or a member thereof, or by causing organic brain damage which renders the body or any member thereof useless through the violation of subsection (a) of Code Section 40-6-26 commits the offense of serious injury by interference with an official traffic-control device or railroad sign or signal and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Code 1981, § 40-6-396, enacted by Ga. L. 1996, p. 1281, § 3.)

Law reviews. — For review of 1996 uniform rules of the road legislation, see 13 Ga. St. U.L. Rev. 241 (1996).

40-6-397. Aggressive driving; penalty.

(a) A person commits the offense of aggressive driving when he or she operates any motor vehicle with the intent to annoy, harass, molest, intimidate, injure, or obstruct another person, including without limitation violating Code Section 40-6-42, 40-6-48, 40-6-49, 40-6-123, 40-6-184, 40-6-312, or 40-6-390 with such intent.

(b) Any person convicted of aggressive driving shall be guilty of a misdemeanor of a high and aggravated nature. (Code 1981, § 40-6-397, enacted by Ga. L. 2001, p. 208, § 1-7.)

Law reviews. — For annual survey of criminal law, see 56 Mercer L. Rev. 153 (2004).

JUDICIAL DECISIONS

Aggressive driving involves specific, intended victims. — Trial court erred in quashing that part of the indictment that alleged the defendant committed the offense of aggressive driving against three passengers in the other automobile defendant chased, based on the defendant's argument that the offense involved the defendant's manner of driving and was unrelated to the individual occupants of the vehicle; rather, the offense of "aggressive driving" involved specific, intended victims, and, thus, the state was permitted to attempt to prove that the defendant, through the defendant's aggressive driving, targeted not only the other automobile's driver, but also the individual passenger's as well. *State v. Burrell*, 263 Ga. App. 207, 587 S.E.2d 298 (2003).

Reckless conduct conviction no bar to aggressive driving conviction. — Defendant's previous conviction for reckless conduct under O.C.G.A. § 16-5-60 did not bar later conviction for aggressive driving under O.C.G.A. § 40-6-397 when both convictions arose out of the same incident. A conviction for aggressive driving did not require proof of fact that the defendant endangered the bodily safety of the other driver and the other driver's family, while reckless conduct conviction did not require proof of fact that the defendant drove with intent to annoy, harass, intimidate, and injure another; thus, each crime required proof of fact that the other did not, so neither offense was included in the other so as to violate the substantive bar against double jeopardy of O.C.G.A. § 16-1-7. *Winn v. State*, 291 Ga. App. 16, 660 S.E.2d 883 (2008).

Evidence sufficient for conviction. — Trial court was authorized to conclude beyond a reasonable doubt that the defen-

dant committed the offense of aggressive driving when the defendant braked suddenly, causing the car following the defendant to brake also, which caused the third car in line to collide with the car second in line; the evidence also showed that the defendant knew that the driver of the second car was behind the defendant, the passengers in the defendant's car yelled obscenities at the driver of the second car and made obscene gestures toward the second driver, and thereafter, the defendant braked suddenly after telling the defendant's passengers to "watch this." In the Interest of A.M.A., 266 Ga. App. 273, 596 S.E.2d 756 (2004).

Aggressive driving conviction was upheld based on an officer's testimony that the defendant rudely tailgated the officer and became very agitated that the officer was driving slowly. *Frasard v. State*, 278 Ga. App. 352, 629 S.E.2d 53 (2006).

Evidence that the defendant struck a truck four times in rapid succession and then struck the truck again as the defendant fled the scene was sufficient to support the defendant's conviction for aggressive driving. *Simmons v. State*, 321 Ga. App. 743, 743 S.E.2d 434 (2013).

Insufficient evidence for conviction. — Defendant's convictions for terroristic acts, aggressive driving, and criminal trespass were reversed on appeal since the only evidence identifying the defendant as the perpetrator of a roadway situation wherein the victim was tailgated and an object was thrown at the victim's car, causing a dent, was a police officer's hearsay testimony that the officer spoke to the defendant's mother, who indicated that the defendant had not been home, and the hearsay statement of the defendant admitting to the tailgating and honking; this evidence was inadmissible hear-

say and therefore, relying on the remaining evidence, insufficient evidence existed to support the defendant's convictions. *Patterson v. State*, 287 Ga. App. 100, 650 S.E.2d 770 (2007).

Challenge rendered moot by acquittal. — In a defendant's trial for aggressive driving and other charges arising out of a road rage incident, the defen-

dant's claim that the trial court erred by omitting a pronoun representing the gender of a victim when charging the jury on the offense of aggressive driving was moot in light of the jury's acquittal of the defendant on that charge. *Adams v. State*, 282 Ga. App. 819, 640 S.E.2d 329 (2006).

Cited in *State v. Ogilvie*, 292 Ga. 6, 734 S.E.2d 50 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Georgia Crime Information Center is authorized to collect and file fingerprints of persons charged

with a violation of O.C.G.A. § 40-6-397. 2001 Op. Att'y Gen. No. 2001-11.

CHAPTER 7

OFF-ROAD VEHICLES

Sec.		Sec.	
40-7-1.	Short title.	40-7-5.	Authority to regulate time periods and to establish zones of use.
40-7-2.	Declaration of policy.		
40-7-3.	"Off-road vehicle" defined.	40-7-6.	Enforcement and penalties.
40-7-4.	Operating restrictions; "perennial stream" defined.		

Cross references. — Jurisdiction to try certain cases involving operation of off-road vehicle, § 15-9-30.8.

RESEARCH REFERENCES

ALR. — Accidents involving negligence in operation of snowmobile, skimobile, or similar vehicle, 42 ALR3d 1422.

Operation or use of vehicle outside

scope of permission as rendering it uninsured within meaning of uninsured motorist coverage, 17 ALR4th 1322.

40-7-1. Short title.

This chapter shall be known and may be cited as the "Off-Road Vehicle Act of 1975." (Ga. L. 1976, p. 330, § 1.)

40-7-2. Declaration of policy.

The rapid increase in the use of off-road vehicles and their growing impact upon aspects of the public interest are matters of concern to the General Assembly and to the people of this state. Therefore, in order to promote the safe use of off-road vehicles, to protect the wildlife and natural resources of the state, and to guarantee the availability of various forms of recreation to all citizens in an environment of diversity and quality, this chapter is enacted. (Ga. L. 1976, p. 330, § 2; Ga. L. 1985, p. 149, § 40.)

40-7-3. "Off-road vehicle" defined.

As used in this chapter, the term "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain and not intended for use predominantly on public roads. The term includes, but is not limited to, four-wheel drive vehicles, low-pressure tire vehicles, two-wheel vehicles, nonhighway tire vehicles, amphibious machines, ground effect or air cushion vehicles, and

any other means of transportation deriving power from any source other than muscle or wind. The term shall exclude any motorboat; any military, fire, law enforcement, or other government vehicle being used for official purposes; any vehicles used exclusively on airports; all farm machinery, farm tractors, and other vehicles used exclusively for agricultural purposes; any self-propelled equipment for harvesting and transportation of forest products, for clearing land for planting, for utility services and maintenance, for earth moving, construction, or mining; and self-propelled lawnmowers, snowblowers, garden or lawn tractors, or golf carts, while such vehicles are being used exclusively for their designed purposes. (Ga. L. 1976, p. 330, § 3; Ga. L. 2010, p. 98, § 1-1/HB 207; Ga. L. 2012, p. 726, § 4/HB 795.)

The 2012 amendment, effective May 1, 2012, in the second sentence, substituted "The term includes" for "It includes", substituted "four-wheel drive vehicles, low-pressure tire vehicles, two-wheel ve-

hicles, nonhighway tire vehicles," for "four-wheel drive or low-pressure tire vehicles, two-wheel vehicles," and substituted "muscle or wind. The term" for "muscle or wind, except that such term".

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 1 et seq.

40-7-4. Operating restrictions; "perennial stream" defined.

Any person operating an off-road vehicle under any of the following conditions shall be deemed to be in violation of this chapter and subject to the penalties provided in Code Section 40-7-6:

(1) Without operative brakes or without mufflers or other silencing equipment;

(2) On any private property without the express written permission of the owner of the property or his or her agent; or

(3) Within any perennial stream, except when directly crossing such stream. As used in this paragraph, the term "perennial stream" means a stream:

(A) That under normal circumstances has water flowing year round;

(B) That has the channel located below the ground-water table most of the year;

(C) For which ground water is the primary source of water; and

(D) For which runoff from rainfall is a supplemental source of water flow. (Ga. L. 1976, p. 330, § 4; Ga. L. 1994, p. 97, § 40; Ga. L. 2010, p. 98, § 1-2/HB 207.)

JUDICIAL DECISIONS

Cited in *Simmons v. State*, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 199, 201.

40-7-5. Authority to regulate time periods and to establish zones of use.

(a) Incorporated towns and municipalities and counties shall have the authority to adopt ordinances consistent with state laws or regulations to regulate time periods and zones of use for off-road vehicles.

(b) Agencies of state government shall have the authority to adopt rules and regulations to regulate time periods and zones for use for off-road vehicles on property under their jurisdiction or management. (Ga. L. 1976, p. 330, § 5.)

40-7-6. Enforcement and penalties.

All peace officers shall enforce the provisions of this chapter. Any person who violates any provision of this chapter shall not thereby be guilty of a criminal act but shall be subject to a civil penalty of not less than \$25.00. (Ga. L. 1976, p. 330, § 6; Ga. L. 2010, p. 98, § 1-3/HB 207.)

Cross references. — Jurisdiction to try certain cases involving operation of off-road vehicle, § 15-9-30.8.

CHAPTER 8

EQUIPMENT AND INSPECTION OF MOTOR VEHICLES

Article 1

Equipment Generally

PART 1

GENERAL PROVISIONS

- Sec.
 40-8-1. Application of article.
 40-8-2. Vehicles within jurisdiction of commissioner of public safety.
 40-8-3. Vehicle or load dragging on highway; wheels causing pounding on road surface.
 40-8-4. Emblem on slow-moving vehicle or unlicensed three-wheeled motorcycle used only for agricultural purposes.
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PART 2

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 40-8-21. Visibility distance and mounted height; exception for wreckers.
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- 40-8-25. Brake lights and turn signals required.
 40-8-26. Standards for brake lights and signal devices.
 40-8-27. Light, flag, or strobe lamp on projecting load; requirements for lamp and flag.
 40-8-28. Lights on parked vehicles.
 40-8-29. Spotlights, foglights, and auxiliary lights permitted.
 40-8-30. Standards for multiple-beam road lighting equipment.
 40-8-31. Use of multiple-beam road lighting equipment.
 40-8-32. Lights on vehicles of rural mail carriers.
 40-8-33. Lights on farm tractors and unlicensed three-wheeled motorcycles used only for agricultural purposes; restrictions on trailers and semitrailers otherwise exempt under Code Section 40-8-1; no duty on manufacturers of lighting systems.
 40-8-34. Color in lighting equipment.
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PART 3

BRAKES

- 40-8-50. Brakes required.
 40-8-51. Means of operation.
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PART 4

HORNS, EXHAUST SYSTEMS, MIRRORS, WINDSHIELDS, TIRES, SAFETY BELTS, ENERGY ABSORPTION SYSTEMS

- 40-8-70. Horns and warning devices.
 40-8-71. Exhaust system; prevention of noise, smoke, and fumes.
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duce light transmission or increase light reflectance through windows or windshields.

40-8-74. Tires.

40-8-75. Tire covers.

40-8-76. Safety belts required as equipment; safety restraints for children.

40-8-76.1. Use of safety belts in passenger vehicles.

40-8-77. Energy absorption system.

40-8-78. Safety glazing.

40-8-79. Unlawfully riding in bed of pickup truck; penalty.

PART 5

EQUIPMENT OF LAW ENFORCEMENT AND
EMERGENCY VEHICLES

40-8-90. Restrictions on use of blue lights on vehicles.

40-8-91. Marking and equipment of law enforcement vehicles; motorist allowed to continue to safe location before stopping for law enforcement officer vehicles.

40-8-91.1. Marking and equipment of all-terrain vehicles used as law enforcement vehicles.

40-8-92. Designation of emergency vehicles; flashing or revolving lights; permits; fee; prohibition against use of flashing or revolving green lights by private persons on public property.

40-8-93. Flashing parking or brake lights or directional signals not prohibited.

40-8-94. Sirens, whistles, or bells.

40-8-95. Rules and regulations.

40-8-96. Violation of Code Sections 40-8-90 and 40-8-92.

PART 6

EQUIPMENT OF SCHOOL BUSES

40-8-110. Identification and color.

40-8-111. Equipment generally.

40-8-112. Compliance with State Board Bus Specifications.

40-8-113. Standards applicable regardless of size or capacity.

40-8-114. Operation of school buses by churches, private schools, and

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local transit systems; transportation of school children on buses owned or operated by public transit systems.

40-8-115. Identification and equipment of school buses for special school route service.

40-8-116. Unlawful acts.

Article 2

Control of Vehicle Emissions

PART 1

EMISSION CONTROL DEVICES GENERALLY

40-8-130. Unlawful to operate vehicle without serviceable emission control device; penalty; exceptions.

40-8-131. Inspection without warrant authorized.

40-8-132. Annual inspection [Repealed].

PART 2

ESTABLISHMENT OF EMISSION STANDARDS;
INSPECTION OF MOTOR VEHICLES FOR
COMPLIANCE WITH STANDARDS

40-8-150 through 40-8-163. [Repealed].

PART 3

VISIBLE EMISSIONS

40-8-180. Short title.

40-8-181. Visible emissions from vehicles on public roadways prohibited; exceptions.

40-8-182. Enforcement of part; traffic violation citations.

40-8-183. Penalty.

40-8-184. Municipal and county regulation prohibited.

40-8-185. Part not applicable to certain vehicles.

Article 3

Inspections by Officers of
Department of Public Safety

40-8-200. Inspection of vehicles by officers of the Department of Public Safety; issuance of certificate of inspection; procedure.

40-8-201. Duties of owners and drivers of vehicles.

Article 4**Inspection of Public School Buses**

Sec.

40-8-220. Inspection of public school buses.

40-8-221. Penalty.

Sec.

40-8-222 through 40-8-264. [Repealed].

Article 5**Vehicle Equipment Safety Compact**

40-8-280 through 40-8-291. [Repealed].

Cross references. — Duties of state fire marshal regarding setting forth of minimum standards covering design, construction, and other aspects of transportation of liquefied petroleum gas by tank truck, tank trailer, or other method,

§ 10-1-265. Regulation of size, weight, and other aspects of vehicles and loads on public highways, § 32-6-20 et seq. Observance of laws by motor carriers, § 40-1-122. Georgia Forest Products Trucking Rules, § 46-1-1.

JUDICIAL DECISIONS

Cited in Archer v. Johnson, 90 Ga. App. 418, 83 S.E.2d 314 (1954); Beck v. Wade, 100 Ga. App. 79, 110 S.E.2d 43 (1959);

Hodges v. State, 100 Ga. App. 611, 112 S.E.2d 373 (1959); King v. State, 133 Ga. App. 426, 211 S.E.2d 363 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Coverage of inspection laws. — Legislature intended that both owner-drivers and nonowner-drivers of vehicles should

be covered by the motor vehicle inspection laws. 1967 Op. Att'y Gen. No. 67-433.

ARTICLE 1**EQUIPMENT GENERALLY**

Editor's notes. — Ga. L. 1982, p. 165, which repealed and reenacted Parts 1 through 4 of this article, contained a legislative intent provision in § 11, not codified by the General Assembly, which stated: "The General Assembly finds that properly equipped and serviced vehicles contribute to the public welfare and safety of the citizens of Georgia through the reduction of motor vehicle accidents resulting from mechanical failure. The General Assembly also finds that it is the responsibility of all motorists to maintain

their motor vehicles in proper working condition. It is the intent of this Act to encourage all citizens to maintain their motor vehicles in safe operating condition. It is furthermore the intent of this Act to encourage the Department of Human Resources to promulgate rules and regulations specifying minimum safety standards for motor vehicles used to transport persons to and from day care centers or child care centers licensed by said department."

JUDICIAL DECISIONS

Vehicle retains "automobile" status regardless of operability. — Wheeled vehicle, designed to be self-propelled and to serve as a means of transportation, does not gain or lose status as an "auto-

mobile" depending upon whether at any given time it is or is not fully capable of being operated as such. Cotton States Mut. Ins. Co. v. Statiras, 157 Ga. App. 169, 276 S.E.2d 853 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Basis for vehicular distinctions. — Legislature based its vehicular distinctions not solely upon the load carried but upon the manner in which the defined load is carried by the vehicle under consideration. 1968 Op. Att’y Gen. No. 68-308.

Vehicle with flexible, welded joint. — Type of unit which is secured by a flexible, welded joint is a single unified motor vehicle and not two separate vehicles. As such, it is subject to the braking inspection requirements imposed by law on motor vehicles. 1968 Op. Att’y Gen. No. 68-308.

Pole trailers. — Legislature intended

to classify as pole trailers only those vehicles in which the load thereupon carried was utilized to carry the trailer’s own weight between the supporting connections. 1968 Op. Att’y Gen. No. 68-308.

Golf cart is motor vehicle. — Golf cart was a vehicle other than a tractor, not operated upon a track, and propelled by other than muscular power and thus fell within the definition of “motor vehicle.” If it was to be operated upon a public road, the operator must comply with registration and inspection requirements and all equipment requirements of former Code 1933, Ch. 68-17. 1972 Op. Att’y Gen. No. U72-78.

PART 1

GENERAL PROVISIONS

40-8-1. Application of article.

(a) This article shall not apply to implements of husbandry, road machinery, road rollers, farm tractors, or three-wheeled motorcycles used only for agricultural purposes, except when expressly made applicable. This article shall not apply to personal transportation vehicles.

(b) Nothing in this article shall be construed to prohibit the use of additional parts and accessories on any vehicle, which use is not inconsistent with the provisions of this article. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 102; Ga. L. 1973, p. 598, § 3; Code 1933, § 68E-101, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-1, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329, § 3; Ga. L. 1992, p. 6, § 40; Ga. L. 2014, p. 745, § 13/HB 877.)

The 2014 amendment, effective July 1, 2014, substituted “personal transportation vehicles” for “motorized carts” at the

end of the second sentence of subsection (a).

JUDICIAL DECISIONS

Cited in Sheppard v. Martin, 100 Ga. App. 164, 110 S.E.2d 429 (1959); Mathis v. Patrick, 109 Ga. App. 376, 136 S.E.2d 166 (1964); Arnold Servs., Inc. v. Sullins, 110

Ga. App. 19, 137 S.E.2d 727 (1964); Faust v. Buchanan, 123 Ga. App. 15, 179 S.E.2d 294 (1970); Rogers v. State, 131 Ga. App. 136, 205 S.E.2d 901 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Motor vehicles owned by a city or county are subject to the same equipment requirements as privately owned vehicles. 1954-56 Op. Att'y Gen. p. 468.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 183 et seq., 218, 219.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 33 et seq., 43 et seq., 111 et seq.

ALR. — Constitutionality, construction, and application of statute or ordinance requiring inspection of motor vehicles, 106 ALR 795.

40-8-2. Vehicles within jurisdiction of commissioner of public safety.

In addition to the requirements of this article, the commissioner of public safety, as to the motor vehicles within the jurisdiction of the Department of Public Safety, shall have the authority to promulgate rules designed to promote safety pursuant to the provisions of Code Section 40-1-8. Any such rules promulgated or deemed necessary by the commissioner shall include the following: every vehicle and all parts thereof shall be maintained in a safe condition at all times. The lights, brakes, and equipment shall meet such safety requirements as the commissioner shall promulgate from time to time. Notwithstanding any provision of law to the contrary, a vehicle, driver, or motor carrier that is subject to a safety rule so promulgated shall comply with the more stringent or additional requirement imposed by that motor carrier safety or hazardous materials safety rule. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 102; Ga. L. 1973, p. 598, § 3; Code 1933, § 68E-102, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-2, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2000, p. 951, § 5B-1; Ga. L. 2005, p. 334, § 19-1/HB 501; Ga. L. 2011, p. 479, § 12/HB 112.)

40-8-3. Vehicle or load dragging on highway; wheels causing pounding on road surface.

No vehicle or load any portion of which drags or slides on the surface of the roadway shall be used or transported on the highways. No vehicle shall be used or transported on the highways the wheels of which, while being used or transported, either from construction or otherwise, cause pounding on the road surface. (Ga. L. 1927, p. 226, § 17; Code 1933, § 68-404; Ga. L. 1970, p. 628, § 1; Code 1933, § 68E-103, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-3, enacted by Ga. L. 1982, p. 165, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 202. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 1121.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq.

40-8-4. Emblem on slow-moving vehicle or unlicensed three-wheeled motorcycle used only for agricultural purposes.

(a) It shall be unlawful for any person to operate upon the public roads of this state any slow-moving vehicle or equipment, any farm trailer or semitrailer which is used for agricultural purposes and which would otherwise be exempt from this article as an implement of husbandry under Code Section 40-8-1, any animal drawn vehicle, or any machinery designed for use and generally operated at speeds less than 25 miles per hour, including all road construction or maintenance equipment and machinery except when engaged in actual construction or maintenance procedures and all other construction equipment and machinery, unless there is displayed on the rear thereof an emblem which shall comply with subsection (b) of this Code section. It shall also be unlawful to operate upon the public roads of this state without such an emblem any three-wheeled motorcycle used only for agricultural purposes unless such three-wheeled motorcycle is licensed as required by Chapter 2 of this title and is in compliance with all other requirements of this chapter.

(b) The emblem required by subsection (a) of this Code section shall conform with those standards and specifications adopted for slow-moving vehicles by the American Society of Agricultural Engineers in December, 1966, and contained within such society's standard ASAE S276.1, or shall be an emblem of the same shape and size painted on such vehicle in a bright and conspicuous retroreflective red orange paint. Such emblem shall be mounted on the rear of such vehicles, in the approximate horizontal geometric center of the vehicle, at a height of three to five feet above the roadway, and shall be maintained at all times in a clean and reflective condition.

(c) Any person violating this Code section shall be guilty of a misdemeanor.

(d) Nothing in this Code section shall apply to any self-propelled, two-wheeled vehicle. (Ga. L. 1970, p. 229, §§ 1-4; Code 1933, § 68E-104, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-4, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329, § 4; Ga. L. 1989, p. 298, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 8, 200.

40-8-5. Alteration of odometer; involvement with devices which cause odometer to register other than actual mileage; penalties.

(a) It shall be unlawful for any person knowingly to tamper with, adjust, alter, change, set back, disconnect, or fail to connect an odometer of a motor vehicle, or to cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than the motor vehicle has actually been driven, except as provided in this Code section.

(b) It shall be unlawful for any person knowingly to bring into this state a motor vehicle which reflects a lower mileage than the motor vehicle actually has been driven due to any illegal acts outlined in subsection (a) of this Code section.

(c) It shall be unlawful for any person knowingly to sell or attempt to sell a motor vehicle which reflects a lower mileage than the motor vehicle actually has been driven due to any illegal acts outlined in subsection (a) of this Code section.

(d) Subsections (a), (b), and (c) of this Code section shall not apply to the disconnection of the odometer used for registering the mileage or use of new motor vehicles being tested by the manufacturer prior to delivery to a franchised dealer.

(e) It shall be unlawful for any person to advertise for sale, to sell, to use, to install, or to have installed any device which causes an odometer to register any mileage other than the actual mileage driven. For the purposes of this subsection, the actual mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(f) It shall be unlawful for any person to conspire with any other person to violate this Code section.

(g)(1) In addition to any other penalty provided by law, any person who, with intent to defraud, violates this Code section shall be liable in an amount equal to the sum of:

(A) Three times the amount of actual damages sustained or \$1,500.00, whichever is greater; and

(B) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with reasonable attorney's fees, as determined by the court.

(2) Any action to enforce any liability created under this subsection may be brought in any superior court or state court having proper jurisdiction, within two years from the date on which the liability arises.

(h)(1) If any person violates any provision of this Code section, the Attorney General, any district attorney in this state, or any solicitor-general in this state may bring an action in any superior court or state court having jurisdiction to restrain such violation.

(2) Any action arising under paragraph (1) of this subsection may be brought within two years from the date of the violation.

(i) Any person violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1975, p. 754, §§ 1, 2; Ga. L. 1977, p. 1227, § 1; Ga. L. 1981, p. 649, § 1; Code 1933, § 68E-105, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-5, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1985, p. 149, § 40; Ga. L. 1996, p. 748, § 20.)

Cross references. — Entry of odometer reading on certificate of title upon sale or transfer of motor vehicle, § 40-3-25. Actions giving rise to suspension or revocation of licenses of used car dealers generally, § 43-47-10.

Editor's notes. — Ga. L. 1996, p. 748, § 27, not codified by the General Assembly, provides: "Notwithstanding any other provision of law, an Act approved February 11, 1854 (Ga. L. 1854, p. 281), which abolished the office of solicitor of the City Court of Savannah, now the State Court of Chatham County, and transferred responsibility for the prosecution of criminal cases in said court to the solicitor general (now the district attorney) for the Eastern Judicial Circuit is confirmed. It shall be the duty of said district attorney to prosecute all criminal actions in said state court until otherwise specifically provided by law."

Ga. L. 1996, p. 748, § 28, not codified by the General Assembly, provides: "The provisions of this Act shall not affect the powers, duties, or responsibilities of the district attorney as successor to the office of solicitor general under the constitution,

statutes, and common law of this state as provided by Code Section 15-18-1."

Ga. L. 1996, p. 748, § 29, not codified by the General Assembly, provides: "Except as otherwise authorized in this Act, on and after July 1, 1996, any reference in general law or in any local Act to the solicitor of a state court shall mean and shall be deemed to mean the solicitor-general of such state court."

Ga. L. 1996, p. 748, § 30, not codified by the General Assembly, provides: "The provisions of paragraph (3) of Code Section 15-18-62, relating to the qualifications for the office of solicitor-general of a state court, shall apply to any person elected or appointed to such office after July 1, 1996. Any person holding such office on July 1, 1996, may continue to hold such office for the remainder of the term to which such person was elected or appointed notwithstanding the fact that such person has not been a member of the State Bar of Georgia for three years if such person is otherwise qualified to hold the office of solicitor-general."

Law reviews. — For annual survey on law on torts, see 42 Mercer L. Rev. 431 (1990).

JUDICIAL DECISIONS

Conflicting evidence of mileage presented jury question. — When the

evidence established that at the time an automobile was purchased by seller of

automobile the certificate of ownership listed 14,229 miles as the car's mileage, that when the car was sold by the seller to the buyer, the odometer read 14,179 miles, and when the buyers test-drove the car the odometer read approximately 7,000 miles, there is considerable conflict regarding the actual mileage of the car, and it is the province of the jury to determine whether the seller altered or knew of the alteration of the odometer. *Joseph Charles Parrish, Inc. v. Hill*, 173 Ga. App. 97, 325 S.E.2d 595 (1984).

Trial court's grant of summary judgment to the defendant was error because the circumstantial evidence in support of the plaintiff's tampering claim pointed at least more strongly to a conclusion opposite to the defendant's testimony denying the claim, and was sufficient to allow a jury to draw reasonable inferences in favor of the claim. *Winder v. Paul Light's Buckhead Jeep Eagle Chrysler Plymouth, Inc.*, 249 Ga. App. 707, 549 S.E.2d 515 (2001).

Purpose. — O.C.G.A. § 40-8-5 is designed to protect consumers against fraud in the statute's general prohibition against odometer tampering. *Chrysler Motors Corp. v. Morgan*, 194 Ga. App. 39, 389 S.E.2d 545, cert. dismissed, 194 Ga. App. 911, 389 S.E.2d 545 (1989).

Testing does not alter status of vehicle. — One legal effect of O.C.G.A. § 40-8-5(d) is that a manufacturer's disconnection of a new vehicle's odometer and testing of that vehicle does not alter the status of that vehicle. It is still a new vehicle. *Chrysler Motors Corp. v. Morgan*, 194 Ga. App. 39, 389 S.E.2d 545, cert. dismissed, 194 Ga. App. 911, 389 S.E.2d 545 (1989).

Punitive damages. — Punitive damages are not permitted solely for violation of O.C.G.A. § 40-8-5; recovery is limited to three times actual damages or \$1,500, whichever is greater. *Joseph Charles Parrish, Inc. v. Hill*, 173 Ga. App. 97, 325 S.E.2d 595 (1984).

Damages under both federal and state laws unwarranted. — Nothing on the face of either the federal or the state statute warrants a conclusion that it was intended that a successful consumer litigant, in effect, reap the benefit of six times

the amount of actual damages suffered or a minimum award of \$3,000 merely because the litigant asserts in a state judicial forum causes of action, arising from the same general course of conduct, under both the federal and the state odometer law. Such a result would vest the consumer with a major windfall, and one that is not needed to advance the legislative purpose behind the odometer statutes. *Force v. McGeachy*, 186 Ga. App. 781, 368 S.E.2d 777 (1988).

When no damages, attorney fees to be awarded. — Both paragraph (g)(1) of O.C.G.A. § 40-8-5 and 15 U.S.C. § 1989(a)(2) on their face require the trial court and not the jury to determine reasonable attorney fees and to award costs of the action whenever the litigation to enforce the odometer statutes is successful. Accordingly, the trial judge erred in refusing to award any attorney fees whatsoever to the plaintiff's counsel after the jury found the defendant had defrauded the plaintiff but awarded no damages or litigation expense. *Force v. McGeachy*, 186 Ga. App. 781, 368 S.E.2d 777 (1988).

Attorney fees for services performed at appellate level. — In the event that a case is retried in whole or in part, and if the plaintiff should once more be successful, plaintiff's counsel would be entitled to an award of reasonable attorney fees based not only on all proceedings prepared for and conducted at the trial court level but based on counsel's representation of the client at the appellate level as well, and the trial court has the power and is the proper forum in which to determine reasonable attorney fees for services performed, including those on appeal. *Force v. McGeachy*, 186 Ga. App. 781, 368 S.E.2d 777 (1988).

Waiver of rights. — Rights which a purchaser of an automobile acquired under O.C.G.A. § 40-8-5 are waived by the purchaser's signing of a release absolving the dealer of liability when the purchaser is an articulate and wary businessman who is knowledgeable and experienced in the law. *Leathers v. Robert Potamkin Cadillac Corp.*, 184 Ga. App. 430, 361 S.E.2d 845 (1987).

Cited in State ex rel. *Ryles v. Meredith Chevrolet, Inc.*, 145 Ga. App. 8, 244 S.E.2d 15 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 195 et seq.

Am. Jur. Proof of Facts. — Fraudulent Alteration of Odometer, 1 POF2d 677.

ALR. — Construction and application of state statute making it unlawful to tamper with motor vehicle odometer, 76 ALR3d 981.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

Validity, construction and application of

state laws concerning, relating to, or encompassing disclosure of and tampering with motor vehicle odometer — Validity of statutory provisions, construction of statute and particular terms, and remedies, 66 ALR6th 351.

Validity, construction, and application of state laws concerning, relating to, or encompassing disclosure of and tampering with motor vehicle odometer — Statutes of limitation, parties to action, evidentiary matters, and particular violations of statute, 67 ALR6th 209.

40-8-6. Alteration of suspension system; operation of vehicle with broken springs.

(a) It shall be unlawful to alter the suspension system of any private passenger motor vehicle which may be operated on any public street or highway more than two inches above or below the factory recommendation for any such vehicle.

(b) It shall be unlawful to operate any private passenger motor vehicle upon any highway, roadway, or street if the suspension system of such vehicle has been altered more than two inches above or below the factory recommendation for such vehicle.

(c) It shall be unlawful to operate any motor vehicle upon any highway, roadway, or street if the springs relative to the suspension system are broken.

(d) Any person violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1973, p. 458, §§ 1, 2; Ga. L. 1975, p. 763, § 1; Code 1933, § 68E-106, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-6, enacted by Ga. L. 1982, p. 165, § 10.)

40-8-6.1. Raised chassis vehicles.

(a) As used in this Code section, the term:

(1) "Frame" means the main longitudinal structural members of the chassis of a truck.

(2) "Frame height" means the vertical distance between a level surface and the lowest point on the frame of a truck, measured when the truck is upon such level surface without a load.

(3) "Gross vehicle weight rating" means the manufacturer's gross vehicle weight rating whether or not the vehicle is modified by use of parts not originally installed by the manufacturer.

(b) It shall be unlawful to alter the suspension system of any truck with a gross vehicle weight rating of 4,500 pounds or less, which may be operated on any public street or highway, so as to exceed 27 inches as measured from the surface of the street to the lowest point on the frame of the truck.

(c) It shall be unlawful to alter the suspension system of any truck with a gross vehicle weight rating of not less than 4,501 pounds and not more than 7,500 pounds, which may be operated on any public street or highway, so as to exceed 30 inches as measured from the surface of the street to the lowest point on the frame of the truck.

(d) It shall be unlawful to alter the suspension system of any truck with a gross vehicle weight rating of not less than 7,501 pounds and not more than 14,000 pounds, which may be operated on any public street or highway, so as to exceed 31 inches as measured from the surface of the street to the lowest point on the frame of the truck.

(e) It shall be unlawful to operate any truck upon any highway, roadway, or street if the suspension system has been altered in excess of the limitations provided for in this Code section.

(f) Any person violating this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-8-6.1, enacted by Ga. L. 1986, p. 1210, § 1; Ga. L. 1992, p. 6, § 40.)

40-8-7. Driving unsafe or improperly equipped vehicle; punishment for violations of chapter generally; vehicle inspection by law enforcement officer without warrant.

(a) No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof, unless the equipment upon any and every such vehicle is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

(b) It is a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any street or highway any vehicle or combination of vehicles:

(1) Which is in such unsafe condition as to endanger any person;

(2) Which does not contain those parts or is not at all times equipped with such lights and other equipment in proper condition and adjustment as required in this chapter; or

(3) Which is equipped in any manner in violation of this chapter.

(c) It is also a misdemeanor for any person to do any act forbidden or fail to perform any act required under this chapter.

(d) Any vehicle suspected of being operated in violation of this article may be the subject of an inspection conducted by any law enforcement officer who has reason to believe such violation is occurring, without the necessity of obtaining a warrant to permit such inspection. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 102, 123; Ga. L. 1963, p. 333, § 1; Code 1933, § 68E-107, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-7, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1994, p. 97, § 40.)

JUDICIAL DECISIONS

Section not limited to enumerated parts. — Ga. L. 1953, Nov.-Dec. Sess. p. 556, §§ 102 and 123, in proscribing unsafe vehicles, is not limited in effect only to the parts enumerated, but is sufficiently broad to cover any other equipment on a motor vehicle which, being defective, renders the vehicle dangerous to others. *Beck v. Wade*, 100 Ga. App. 79, 110 S.E.2d 43 (1959) (see O.C.G.A. § 40-8-7).

Construction. — On the statute's face, O.C.G.A. § 40-8-7 plainly punishes both driving a vehicle in an unsafe condition endangering another and driving a vehicle having defective equipment, and the statute does not condition multiple violations thereof upon different arrests or separate and isolated incidents. *Edmondson v. State*, 285 Ga. App. 543, 647 S.E.2d 92 (2007).

Strict criminal liability. — In a prosecution for driving an unsafe motor vehicle with defective equipment, it was proper to instruct the jury that such crimes are violations of strict liability criminal statutes; meaning that the state must prove that the defendant must do the acts or make the omissions that are prohibited, but does not have to prove a mental fault. *Coates v. State*, 216 Ga. App. 93, 453 S.E.2d 35 (1994).

In a prosecution for driving an unsafe motor vehicle with defective equipment, the defense of accident did not apply. The fact that there was no criminal scheme, undertaking, or criminal negligence was not a defense to this strict liability criminal statute. *Coates v. State*, 216 Ga. App. 93, 453 S.E.2d 35 (1994).

State was not required to prove guilty knowledge in a prosecution for driving an improperly equipped vehicle. *Nelson v.*

State, 224 Ga. App. 623, 481 S.E.2d 605 (1997).

Determination of safety for jury. — It is proper to allow the jury to determine whether a vehicle was unsafe. *Elliott v. Leavitt*, 122 Ga. App. 622, 178 S.E.2d 268 (1970).

Sufficient evidence of guilt. — Given evidence from an ensuing police officer identifying the defendant as the driver of the vehicle stopped, and because the jury was the judge of the credibility of the witnesses presented at trial, and was authorized to reject the defendant's alibi defense, sufficient evidence was presented to support the defendant's convictions for reckless driving, failure to maintain a lane, driving with defective equipment, fleeing or attempting to elude a police officer, and obstruction of a police officer. *Daniel v. State*, 282 Ga. App. 291, 638 S.E.2d 430 (2006).

Sentencing. — Because there was no evidence that the defendant had commenced serving the sentence announced at trial, the trial court did not erroneously increase the sentence nine days later to 12 months' confinement by means of a nunc pro tunc order. *Edmondson v. State*, 285 Ga. App. 543, 647 S.E.2d 92 (2007).

In a case arising from a single traffic accident involving the defendant's tractor-trailer, the trial court did not err in not merging the defendant's convictions on 12 counts of driving a vehicle with defective equipment; O.C.G.A. § 40-8-7 does not condition multiple violations upon different arrests or separate incidents, and each equipment defect count charged different defects and thus was proven on different facts. *Edmondson v. State*, 285 Ga. App. 543, 647 S.E.2d 92 (2007).

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver "parked" the truck, but that the truck came to a stop of the truck's own volition. *White v. Scott*, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Merger. — Given that each of the defendant's defective equipment convictions were proven on different facts, no error resulted from the trial court's failure to merge such offenses for sentencing purposes. *Edmondson v. State*, 285 Ga. App. 543, 647 S.E.2d 92 (2007).

Cited in *Southeastern Liquid Fertilizer*

Co. v. Mock, 92 Ga. App. 270, 88 S.E. 531 (1955); *Sims v. Hoff*, 106 Ga. App. 626, 127 S.E.2d 679 (1962); *Borochoff v. Russell*, 108 Ga. App. 266, 132 S.E.2d 861 (1963); *Arnold Servs., Inc. v. Sullins*, 110 Ga. App. 19, 137 S.E.2d 727 (1964); *Shirey v. Woods*, 118 Ga. App. 851, 165 S.E.2d 891 (1968); *Glynn Plymouth, Inc. v. Davis*, 120 Ga. App. 475, 170 S.E.2d 848 (1969); *Southeast Transp. Corp. v. Hogan Livestock Co.*, 133 Ga. App. 825, 212 S.E.2d 638 (1975); *Simpson v. Reed*, 186 Ga. App. 297, 367 S.E.2d 563 (1988); *Newman v. Collins*, 186 Ga. App. 595, 367 S.E.2d 866 (1988); *United States v. Delyea*, 703 F. Supp. 83 (M.D. Ga. 1989); *Brock v. State*, 196 Ga. App. 605, 396 S.E.2d 785 (1990); *Robinson v. Metropolitan Atlanta Rapid Transit Auth.*, 197 Ga. App. 628, 399 S.E.2d 252 (1990); *Hall v. Buck*, 206 Ga. App. 754, 426 S.E.2d 586 (1992); *In the Interest of W.N.J.*, 268 Ga. App. 637, 602 S.E.2d 173 (2004); *Valentine v. State*, 323 Ga. App. 761, 748 S.E.2d 122 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-1723 are included in the annotations for this Code section.

Each operation of unsafe vehicle is misdemeanor. — Once a vehicle has been declared unsafe, a misdemeanor citation may be issued each time the vehicle is found moving on the highways for purposes other than effecting the requisite repairs. 1974 Op. Att'y Gen. No. 74-31 (decided under former Code 1933, § 68-1723).

Persons who may be issued citations. — Citations may be issued not only to the driver of an unsafe school bus but

also to any person who knew the school bus to be in an unsafe condition and yet ordered or directed the driver to take the bus upon the highways, and to the owner of the school bus if such owner knew of the unsafe condition and yet permitted continued operation of the school bus. 1974 Op. Att'y Gen. No. 74-31 (decided under former Code 1933, § 68-1723).

Motor scooters. — Retailer of motor scooters must comply with the inspection requirements of former Code 1933, § 1723 prior to shipment or sale of such motor scooters to a purchaser. 1968 Op. Att'y Gen. No. 68-91 (decided under former Code 1933, § 68-1723).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 724.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1504 et seq., 1639, 1640.

ALR. — Contributory negligence of

driver or occupant of motor vehicle driven without lights or with defective or inadequate lights, 67 ALR2d 118; 62 ALR3d 560; 62 ALR3d 771; 62 ALR3d 844.

Liability or recovery in automobile neg-

ligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 ALR3d 13.

40-8-8. Speedometer.

Every motor vehicle operated upon a public street or highway shall be equipped with a speedometer in good working order. (Code 1933, § 68E-108, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-8, enacted by Ga. L. 1982, p. 165, § 10.)

40-8-9. Compliance with federal provisions.

It shall be unlawful to operate in this state any truck or truck tractor having a gross weight of 43,000 or more pounds which does not comply with the vehicle identification rules of the commissioner promulgated pursuant to Chapter 7 of Title 46 and Chapter 16 of this title or the vehicle identification rules of the United States Department of Transportation. (Code 1981, § 40-8-9, enacted by Ga. L. 1986, p. 946, § 1; Ga. L. 2000, p. 951, § 5B-2; Ga. L. 2002, p. 415, § 40; Ga. L. 2002, p. 1378, § 6; Ga. L. 2004, p. 749, § 8.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2002, p. 415, § 40, irreconcilably conflicted with and was treated as super-

sed by Ga. L. 2002, p. 1378, § 6. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

40-8-10. Operation of motor vehicles with nitrous oxide; penalty for violation.

(a) It shall be unlawful for any person on a public road to drive a passenger car, excluding a motor home, which supplies the motor vehicle's combustion engine with nitrous oxide unless the system supplying nitrous oxide is made inoperative by disconnecting the line feeding nitrous oxide to the engine or by removing the container or containers of nitrous oxide from the vehicle.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-8-10, enacted by Ga. L. 2002, p. 1080, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offense arising under O.C.G.A. § 40-8-10(a) does not re-

quire fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

PART 2

LIGHTING EQUIPMENT

RESEARCH REFERENCES

ALR. — Validity and construction of regulations as to automobile lights, 78 ALR 815.

Driving motor vehicle without lights or with improper lights as gross negligence or the like warranting recovery by guest under guest statute or similar common-law rule, 21 ALR2d 209.

Contributory negligence of driver or occupant of motor vehicle driven without lights or with defective or inadequate

lights, 67 ALR2d 118; 62 ALR3d 560; 62 ALR3d 771; 62 ALR3d 844.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 ALR3d 13.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle, 64 ALR3d 551.

40-8-20. When lighted headlights and other lights required.

Every vehicle upon a highway within this state at any time from a half-hour after sunset to a half-hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead shall display lights, including headlights, and illuminating devices as required in this part for different classes of vehicles, subject to exceptions with respect to parked vehicles as stated in this part. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 103; Ga. L. 1973, p. 434, § 1; Ga. L. 1977, p. 667, § 1; Code 1933, § 68E-201, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-20, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “half-hour” was substituted for “half hour” in two places.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1910, §§ 1770(4), 1770(29), and 1770(50) are included in the annotations for this Code section.

Purpose of regulations. — Purpose of the several regulations of motor vehicles is the protection of the lives and limbs of all persons upon or using such streets and highways, not only those who may be met, overtaken, or passed by the driver, but as well for the protection of those who may accompany the driver. *Black v. State*, 34 Ga. App. 449, 130 S.E. 591 (1925) (decided under former Code 1910, § 1770(50)).

Violation is negligence per se. — It is negligence per se to operate an automobile along one of the public highways of this state from one hour after sunset to one hour before sunrise without carrying a proper light. *Sheppard v. Johnson*, 11 Ga. App. 280, 75 S.E. 348 (1912) (decided under former Code 1910, § 1770(4)).

Whether or not vehicle is equipped with lights. — Under former Code 1910, § 1770, it was a criminal offense for a person to operate a motor vehicle on a public highway of this state during the period between one hour (now a half-hour) after sunset and one hour (now a

half-hour) before sunrise, without having any lights burning on the vehicle, whether or not the vehicle was equipped with such lights as is required by the statute. *Davis v. West Lumber Co.*, 32 Ga. App. 460, 123 S.E. 757 (1924) (decided under former Code 1910, § 1770(50)); *Fuller v. State*, 33 Ga. App. 372, 126 S.E. 302 (1925) (decided under former Code 1910, § 1770(29)).

Headlights not required. — Trial court did not err when the court granted summary judgment to a driver when the driver had the right of way over the vehicle with which the driver collided, and though not required by law to have the driver's headlights on, the driver stated that the driver's headlights were in fact on because the driver remembered turning the lights on, and because the light from the headlights reflected off of the other car immediately before the collision. *Charles v. Glover*, 258 Ga. App. 710, 574 S.E.2d 910 (2002).

Section is strict liability statute. — O.C.G.A. §§ 40-8-20 and 40-8-22 are examples of "strict criminal liability" motor vehicle safety statutes, which can be violated and enforced of necessity through a criminal sanction without a showing of mens rea or guilty knowledge on the part of the violator. *Queen v. State*, 189 Ga. App. 161, 375 S.E.2d 287 (1988).

Presumption as to compliance. — With nothing appearing to the contrary, it will be assumed that the automobile was duly equipped with "front lights" and that the lights were "throwing strong white lights to a reasonable distance in the direction in which such vehicle is proceeding," in accordance with the requirements of former Code 1910, § 1770. *City of Macon v. Jones*, 36 Ga. App. 799, 138 S.E. 283

(1927) (decided under former Code 1910, § 1770(50)).

Violation as basis for traffic stop and search. — Trial court properly denied the defendant's motion to suppress the methamphetamine seized as a result of a traffic stop on the vehicle the defendant was a passenger in as sufficient evidence supported the trial court's finding that an officer's stop of the vehicle was justified by the officer's reasonable articulable suspicion of a crime, specifically, a violation of O.C.G.A. § 40-8-20. *Richardson v. State*, 283 Ga. App. 89, 640 S.E.2d 676 (2006).

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver had "parked" the truck, but that the truck came to a stop of the truck's own volition. *White v. Scott*, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Cited in *Southeastern Liquid Fertilizer Co. v. Mock*, 92 Ga. App. 270, 88 S.E.2d 531 (1955); *Maulding v. Atlanta Transit Sys.*, 101 Ga. App. 11, 112 S.E.2d 666 (1960); *Fields v. Jackson*, 102 Ga. App. 117, 115 S.E.2d 877 (1960); *Mathis v. Patrick*, 109 Ga. App. 376, 136 S.E.2d 166 (1964); *Plyler v. Smith*, 193 Ga. App. 114, 386 S.E.2d 881 (1989); *Cannon Air Transp. Servs. v. Stevens Aviation, Inc.*, 249 Ga. App. 514, 548 S.E.2d 485 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 203, 204.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 18, 43 et seq. 60A C.J.S., Motor Vehi-

cles, §§ 625 et seq., 697, 698. 61 C.J.S., Motor Vehicles, §§ 1317, 1330, 1338, 1353, 1359. 61A C.J.S., Motor Vehicles, § 1640.

40-8-21. Visibility distance and mounted height; exception for wreckers.

(a) Whenever this article declares the required distance from which certain lights and devices shall render objects visible or within which such lights or devices shall be visible, such provisions shall apply during the times stated in Code Section 40-8-20 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions, unless a different time or condition is expressly stated.

(b) Except as provided in subsection (c) of this Code section, whenever this article declares the required mounted height of lights or devices, it shall mean the distance from the center of such light or device to the level ground upon which the vehicle stands when such vehicle is without a load.

(c)(1) As used in this subsection, the term "wrecker" means any vehicle designed to tow other vehicles.

(2) Except as provided in paragraph (3) of this subsection, the taillights required by Code Section 40-8-23, the brake lights required by Code Section 40-8-26, and the rear turn signal devices required by Code Section 40-8-26 shall be permanently mounted on a wrecker so as to be visible above any vehicle being towed by such wrecker by the drivers of vehicles following such wrecker.

(3) If a wrecker is not permanently equipped with lights as required by paragraph (2) of this subsection, then whenever a wrecker is towing another vehicle temporary taillights, brake lights, and rear turn signals which function so as to signal the actions of the wrecker shall be attached to the vehicle being towed so as to be visible by the drivers of vehicles following such wrecker. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 104; Code 1933, § 68E-202, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-21, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1986, p. 1185, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "tail-lights" was substituted for "tail lights" in paragraphs (c)(2) and (c)(3).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 203 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 343 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Validity and construction of regulations as to automobile lights, 78 ALR 815.

40-8-22. Headlights.

(a) Every motor vehicle other than a motorcycle or motor driven cycle shall be equipped with at least two but not more than four headlights, with at least one on each side of the front of the motor vehicle, which headlights shall comply with the requirements and limitations set forth in this article.

(b) Every motorcycle and every motor driven cycle shall be equipped with at least one and not more than two headlights, which shall comply with the requirements and limitations of this article.

(c) Every headlight upon every motor vehicle, including every motorcycle and motor driven cycle, shall be located at a height measured from the center of the headlight of not more than 54 inches nor less than 24 inches, to be measured as set forth in subsection (b) of Code Section 40-8-21.

(d) The headlights required by this Code section shall be maintained in proper working condition and shall not be covered by any type of material, provided that the covering restriction shall not apply to any vehicle on which the original factory headlights were covered.

(e) It shall be unlawful to operate a motor vehicle unless such motor vehicle is equipped with aiming pads on each headlight. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 105; Ga. L. 1957, p. 616, § 1; Code 1933, § 68E-203, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-22, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1992, p. 2785, § 26.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “motor driven” was substituted for “motor-driven” in subsections (a), (b), and (c).

JUDICIAL DECISIONS

Jury instructions. — Since the defendant specifically requested a jury instruction at a trial on maintaining headlights in proper working order, the defendant specifically waived the right on appeal to enumerate that request as error. *Keller v. State*, 271 Ga. App. 79, 608 S.E.2d 697 (2004).

When a driver collided with a second driver’s stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not sup-

ported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle’s engine failed, and there was no evidence that the second driver “parked” the truck, but that the truck came to a stop of the truck’s own volition. *White v. Scott*, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Cited in *Fields v. Jackson*, 102 Ga. App. 117, 115 S.E.2d 877 (1960); *State v. Hammang*, 249 Ga. App. 811, 549 S.E.2d 440 (2001).

OPINIONS OF THE ATTORNEY GENERAL

More than two headlights on a vehicle. — It was anticipated by the legislature in Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 105 (see O.C.G.A. § 40-8-22) that

motor vehicles could be equipped with more than two headlamps (now headlights). 1954-56 Op. Att'y Gen. p. 469.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 203, 205.

Am. Jur. Proof of Facts. — Defective or Improperly Operated Headlights, 22 POF2d 173.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Validity and construction of regulations as to automobile lights, 78 ALR 815.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without front lights, or with improper front lights, 62 ALR3d 560.

40-8-23. Taillights.

(a) Every motor vehicle, trailer, semitrailer, and pole trailer manufactured prior to January 1, 1954, shall be equipped with at least one taillight mounted on the rear, which when lighted as required in this article shall emit a red light plainly visible from a distance of 500 feet to the rear.

(b) Every motor vehicle, trailer, semitrailer, and pole trailer manufactured after January 1, 1954, shall be equipped with two taillights which meet the specifications provided in this Code section.

(c) Every taillight upon every vehicle shall be located at a height of not more than 60 inches nor less than 20 inches, to be measured as set forth in subsection (b) of Code Section 40-8-21.

(d) Either a taillight or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillight or taillights, together with any separate light for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlights or auxiliary driving lights are lighted.

(e) All lenses on taillights shall be maintained in good repair and shall meet manufacturers' specifications. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 106; Code 1933, § 68E-204, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-23, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "headlights", "taillight", and "taillights" have

been substituted for "head lights", "tail light", and "tail lights", respectively, throughout subsections (a) through (e).

JUDICIAL DECISIONS

Investigatory stop for taillight violation. — Grant of the defendant's motion to suppress was not clearly erroneous as the officer stopping the defendant's automobile for an investigatory stop provided no factual basis for believing that the defendant's older model automobile violated the taillight specifications in O.C.G.A. § 40-8-23(e) simply because newer models violated the statute; further, the trial court could have found that the officer's testimony that the officer had conducted research into the newer models' taillights was less than credible. *State v. Keddington*, 264 Ga. App. 912, 592 S.E.2d 532 (2003).

After a police officer initially stopped the defendant's vehicle because the officer thought that there was no license plate on the vehicle, in violation of O.C.G.A. § 40-8-23(d), but upon a closer inspection the license tag was in fact there but the light for the tag was inoperable, the officer was justified in stopping the vehicle; further, the defendant's nervousness and the smell of marijuana about the car provided a reasonable, articulable suspicion for the officer to detain the defendant for further investigation and suppression of the drugs seized from the defendant's vehicle was properly denied. *Collins v. State*, 273 Ga. App. 598, 615 S.E.2d 646 (2005).

Application to tractors. — Former Code 1933, § 68E-204 did not apply to tractors unless the tractor is equipped with an electric lighting system. *South-eastern Liquid Fertilizer Co. v. Mock*, 92 Ga. App. 270, 88 S.E.2d 531 (1955) (see O.C.G.A. § 40-8-23).

Probable cause shown to stop/arrest defendant for violation. — Deputy sheriff was entitled to qualified immunity with respect to the plaintiff's federal civil rights claims, which were properly dismissed on summary judgment, because the plaintiff did not show that the deputy violated the plaintiff's constitutional rights; the deputy had probable cause to stop the plaintiff for a tag-light violation under O.C.G.A. § 40-8-23(d), and that probable cause was sufficient to permit the deputy to arrest the plaintiff for that violation. Plaintiff's refusal to comply

with the deputy's instructions as well as plaintiff's belligerent and confrontational behavior, provided ample probable cause to arrest plaintiff for violating O.C.G.A. § 16-10-24; finally, the use of a taser gun in effectuating the plaintiff's arrest was reasonably proportionate to the difficult, tense, and uncertain situation that the deputy faced, and did not constitute excessive force. *Draper v. Reynolds*, 369 F.3d 1270 (11th Cir.), cert. denied, 543 U.S. 988, 125 S. Ct. 507, 160 L. Ed. 2d 373 (2004).

Because the arresting officer had probable cause for an initial stop of the defendant based on observing a non-functioning tag light on the defendant's vehicle, and once the vehicle was lawfully stopped, the officer was allowed to ask for consent to search the car, the Court of Appeals rejected the defendant's claims of error regarding those issues as support for granting a motion for a directed verdict as to a violation of O.C.G.A. §§ 16-10-24 and 40-8-23. *Hampton v. State*, 287 Ga. App. 896, 652 S.E.2d 915 (2007).

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver "parked" the truck, but that the truck came to a stop of the truck's own volition. *White v. Scott*, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Cited in *Southern Bakeries Co. v. White*, 103 Ga. App. 146, 118 S.E.2d 724 (1961); *Beadles v. Bowen*, 106 Ga. App. 34, 126 S.E.2d 254 (1962); *Mathis v. Patrick*, 109 Ga. App. 376, 136 S.E.2d 166 (1964); *Rogers v. State*, 131 Ga. App. 136, 205 S.E.2d 901 (1974); *Phillips v. State*, 162 Ga. App. 471, 291 S.E.2d 776 (1982); *Navicky v. State*, 245 Ga. App. 284, 537 S.E.2d 740 (2000); *Kohlmeier v. State*, 289 Ga. App. 709, 658 S.E.2d 261 (2008);

Maloy v. State, 293 Ga. App. 648, 667 S.E.2d 688 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 203, 205.

Am. Jur. Proof of Facts. — Defective or Improperly Operated Taillights, 22 POF2d 225.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 18, 43 et seq. 60A C.J.S., Motor Vehicles, §§ 625 et seq., 697, 698, 791. 61 C.J.S., Motor Vehicles, §§ 1077 et seq., 1153 et seq., 1258 et seq. 61A C.J.S., Motor Vehicles, §§ 1385 et seq., 1470.

ALR. — Validity and construction of regulations as to automobile lights, 78 ALR 815.

Contributory negligence of driver or occupant of motor vehicle driven without lights or with defective or inadequate lights, 67 ALR2d 118; 62 ALR3d 560; 62 ALR3d 771; 62 ALR3d 844.

40-8-24. Reflectors.

(a) Every motor vehicle manufactured after March 12, 1954, and operated upon a highway, other than a truck tractor, motorcycle, or motor driven cycle, shall carry on the rear, either as a part of the taillights or separately, two red reflectors, and every motorcycle and every motor driven cycle shall carry on the rear at least one red reflector, meeting the requirements of this Code section.

(b) Every such reflector shall be mounted on the vehicle at a height not less than 20 inches nor more than 60 inches measured as set forth in subsection (b) of Code Section 40-8-21 and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from the rear of such vehicle except that visibility from the greater distance is hereinafter required of reflectors on certain types of vehicles.

(c) When operated, towed, or parked upon a highway, roadway, or street at any time, every trailer and semitrailer which would otherwise be exempt from this article as an implement of husbandry under Code Section 40-8-1 shall carry on the rear, either as a part of the taillights or separately, two red reflectors and shall carry on the front two red reflectors. The reflectors carried on the rear shall meet the requirements of subsection (b) of this Code section. The reflectors carried on the front of such trailer or semitrailer shall be mounted thereon at a height of not less than 20 inches nor more than 60 inches measured as set forth in subsection (b) of Code Section 40-8-21 and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from the front of such trailer or semitrailer. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107; Code 1933, § 68E-205, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-24, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1989, p. 298, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “motor driven” was substituted for “motor-driven”

in two places in subsection (a) and “tail-lights” was substituted for “tail lights” in subsections (a) and (c).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 189, 190.

§ 625 et seq. 61 C.J.S., Motor Vehicles, § 1208. 61A C.J.S., Motor Vehicles,

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles,

§ 1639.

40-8-25. Brake lights and turn signals required.

(a) It shall be unlawful for any person to sell any motor vehicle manufactured after January 1, 1954, including any motorcycle or motor driven cycle manufactured after January 1, 1954, in this state or for any person to drive such vehicle on the highways unless it is equipped with at least one brake light meeting the requirements of Code Section 40-8-26.

(b) If a motor vehicle is manufactured with two brake lights, both must be operational.

(c) No person shall sell or offer for sale or operate on the highways any motor vehicle, trailer, or semitrailer registered in this state and manufactured or assembled after January 1, 1954, unless it is equipped with mechanical or electrical turn signals meeting the requirements of Code Section 40-8-26. This subsection shall not apply to any motorcycle or motor driven cycle manufactured prior to January 1, 1972. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 108; Code 1933, § 68E-206, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-25, enacted by Ga. L. 1982, p. 165, § 10.)

Cross references. — Provisions regarding turn signals as required equipment on vehicles, § 40-6-124.

to Code Section 28-9-5, in 1991, “motor driven” was substituted for “motor-driven” in subsections (a) and (c).

Code Commission notes. — Pursuant

JUDICIAL DECISIONS

Violation as basis for traffic stop. — Conviction for violating 21 U.S.C. § 841(a)(1) and (b)(1)(B)(ii) was affirmed. District court did not err in denying the defendant’s motion to suppress since the defendant’s Fourth Amendment rights were not violated by a traffic stop as: (1) the stop was not pretextual since the defendant was in violation of O.C.G.A. § 40-8-25(b); (2) only 15-17 minutes elapsed between the initial stop and the defendant’s arrest; (3) the district court

did not err in finding that the defendant consented to a search of the vehicle and that the search did not exceed the scope of permission given; and (4) to the extent that the defendant argued that the dog sniff was illegal because the traffic stop was illegal, that argument failed because the officers had an objectively reasonable basis to stop the defendant’s car. *United States v. Terry*, No. 06-14426, 2007 U.S. App. LEXIS 6881 (11th Cir. Mar. 23, 2007) (Unpublished).

Cited in Williams v. Herr, 112 Ga. App. 529, 145 S.E.2d 639 (1965); Thomson Whsle. Grocery Co. v. Merritt, 116 Ga. App. 764, 159 S.E.2d 107 (1967); Lancaster v. State, 261 Ga. App. 348, 582 S.E.2d 513 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 200, 203.
C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 625 et seq. 61A C.J.S., Motor Vehicles, §§ 1639, 1640.

40-8-26. Standards for brake lights and signal devices.

(a) Any motor vehicle may be equipped and when required under this article shall be equipped with the following signal lights or devices:

(1) A brake light on the rear which shall emit a red light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a taillight; and

(2) A light or lights or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible from both the front and the rear.

(b) Every brake light shall be plainly visible and understandable from a distance of 300 feet to the rear both during normal sunlight and at nighttime, and every signal light or lights indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 300 feet from both the front and the rear. When a vehicle is equipped with a brake light or other signal lights, such light or lights shall at all times be maintained in good working condition. No brake light or signal light shall project a glaring or dazzling light.

(c) All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Code Section 40-8-20.

(d) All lenses on brake lights and signal devices shall be maintained in good repair and shall meet manufacturers' specifications. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 112; Code 1933, § 68E-207, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-26, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "taillight" was substituted for "tail light" in paragraph (a)(1).

JUDICIAL DECISIONS

No conflict with § 40-6-124(b). — There is no conflict between O.C.G.A. § 40-8-26, which requires the maintenance in good order of signal devices on all motor vehicles, and O.C.G.A. § 40-6-124(b), which excuses from that requirement vehicles of a certain size. Stubbs v. State, 193 Ga. App. 342, 387 S.E.2d 619 (1989).

Punishment for violation. — Fine of

\$1,000 for a brake light violation was not excessive. *Bowen v. State*, 237 Ga. App. 597, 516 S.E.2d 311 (1999).

Cited in *Williams v. Herr*, 112 Ga. App. 529, 145 S.E.2d 639 (1965); *Shirey v.*

Woods, 118 Ga. App. 851, 165 S.E.2d 891 (1968); *State v. Warren*, 242 Ga. App. 605, 530 S.E.2d 515 (2000); *Lancaster v. State*, 261 Ga. App. 348, 582 S.E.2d 513 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 200.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 ALR 507; 47 ALR 703; 62 ALR 970; 104 ALR 485.

40-8-27. Light, flag, or strobe lamp on projecting load; requirements for lamp and flag.

(a) Except as provided in subsection (b) of this Code section, whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in Code Section 40-8-20, a red light plainly visible from a distance of at least 500 feet to the sides and rear. The red light required under this Code section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a flag or flags as described in subsection (c) of this Code section not less than 18 inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

(b) Any motor vehicle or trailer transporting a load of logs, long pulpwood, poles, or posts which extend more than four feet beyond the rear of the body or bed of such vehicle shall have securely affixed as close as practical to the end of any such projection one amber strobe type lamp equipped with a multidirectional type lens so mounted as to be visible from the rear and both sides of the projecting load. If the mounting of one strobe lamp cannot be accomplished so that it is visible from the rear and both sides of the projecting load, multiple strobe lights shall be utilized so as to meet the visibility requirements of this subsection. The strobe lamp shall flash at a rate of at least 60 flashes per minute and shall be plainly visible from a distance of at least 500 feet to the rear and sides of the projecting load any time of the day or night. The lamp shall be operating at any time of the day or night when the vehicle is operated on any highway or parked on the shoulder or immediately adjacent to the traveled portion of any public roadway. The projecting load shall also be marked with a flag or flags as described in subsection (c) of this Code section. An emergency light permit as provided for in Code Section 40-8-92 is not required on a vehicle utilizing an amber strobe light to comply with the provisions of this Code section.

(b.1) In lieu of the strobe type lamp or lamps provided for in subsection (b) of this Code section, any motor vehicle or trailer transporting a load of logs, long pulpwood, poles, or posts which extend more than four feet beyond the rear of the body or bed of such vehicle shall have securely affixed as close as practical to the end of any such projection, one light-emitting diode (LED) light equipped with a multi-directional type lens, mounted so as to be visible from the rear and from both sides of the projecting load. If the mounting of one light-emitting diode (LED) light cannot be accomplished so that it is visible from the rear and from both sides of the projecting load, multiple light-emitting diode (LED) lights shall be utilized so as to meet the visibility requirements of this subsection. The light-emitting diode (LED) light or lights shall be amber in color, shall flash at a rate of at least 60 flashes per minute, and shall be plainly visible from a distance of at least 500 feet from the rear and sides at a radius of 180 degrees of the projecting load at any time of the day or night. Any light-emitting diode (LED) light shall be constructed of durable, weather resistant material and may be powered by the vehicle's electrical system or by an independent battery system, or both. If the light-emitting diode (LED) light is powered by an independent battery system, the driver of the vehicle shall have in his or her immediate possession charged, spare batteries for use in case of battery failure. Any solid state light-emitting diode (LED) lighting that consists of multiple light-emitting diode (LED) lights shall not have less than 85 percent of the light-emitting diode (LED) lights in operable condition. The lights shall remain in operation at any time of the day or night when the vehicle is operated on any highway or parked on the shoulder or immediately adjacent to the traveled portion of any public roadway. The projecting load shall also be marked with a flag or flags as described in subsection (c) of this Code section. An emergency light permit as provided for in Code Section 40-8-92 is not required on a vehicle utilizing a light-emitting diode (LED) light to comply with the provisions of this Code section.

(c) The flag or flags as required by subsection (a) or (b) of this Code section shall be of a bright red or orange fluorescent color not less than 18 inches square which is clearly visible and shall be displayed in such a manner that the entire area of the flag is visible from the rear of the vehicle. There shall be a single flag at the extreme rear of the projecting load if the projecting load is two feet wide or less. Two such warning flags shall be required if the projecting load is wider than two feet. Flags shall be located to indicate the maximum width of loads which extend beyond the rear of the vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 109; Code 1933, § 68E-208, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-27, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1999, p. 828, § 2; Ga. L. 2008, p. 171, § 15/HB 1111; Ga. L. 2011, p. 479, § 13/HB 112.)

Cross references. — Length of vehicles and loads, § 32-6-24.

JUDICIAL DECISIONS

Probable cause. — Officer's stop of the defendant's vehicle based on a violation of O.C.G.A. § 40-8-27 for failing to affix a visible red light or bright red or orange flag on a load the defendant was hauling provided sufficient probable cause to stop

the vehicle; thus, the stop was not pretextual. *Bain v. State*, 258 Ga. App. 440, 574 S.E.2d 590 (2002).

Cited in *Green v. Knight*, 153 Ga. App. 183, 264 S.E.2d 657 (1980); *Hall v. Buck*, 206 Ga. App. 754, 426 S.E.2d 586 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 749, 912 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 776, 777.

ALR. — Liability for injury or damage caused by collision with portion of load

projecting beyond rear or side of motor vehicle or trailer, 21 ALR3d 371.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without, or with improper, clearance, load, or similar auxiliary lights, 62 ALR3d 844.

40-8-28. Lights on parked vehicles.

(a) When a vehicle is lawfully parked upon a street or highway during the hours between a half-hour after sunset and a half-hour before sunrise, and there is sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(b) When a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half-hour after sunset and a half-hour before sunrise and there is not sufficient light to reveal any person or object within a distance of 500 feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lights meeting the following requirements: at least one light shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and the same light or at least one other light shall display a red light visible from a distance of 500 feet to the rear of the vehicle; and the location of such light or lights shall always be such that at least one light or combination of lights meeting the requirements of this Code section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. This subsection shall not apply to a motor driven cycle.

(c) If a vehicle is manufactured with two lights meeting the requirements of subsection (b) of this Code section, both such lights shall be maintained in good working order.

(d) Any lighted headlights upon a parked vehicle shall be depressed or dimmed. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 110; Code 1933,

§ 68E-209, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-28, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “half-hour” was substituted for “half hour” in subsections (a) and (b) and “mo-

tor driven” was substituted for “motor-driven” in the last sentence of subsection (b).

JUDICIAL DECISIONS

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver’s stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle’s engine failed, and there was no evidence that the second driver “parked” the truck, but that the truck came to a stop of the truck’s own volition. *White v. Scott*, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Cited in *Reynolds v. Rentz*, 98 Ga. App. 4, 104 S.E.2d 608 (1958); *Brock v. Avery Co.*, 99 Ga. App. 881, 110 S.E.2d 122

(1959); *Beadles v. Smith*, 106 Ga. App. 31, 126 S.E.2d 250 (1962); *Beadles v. Bowen*, 106 Ga. App. 34, 126 S.E.2d 254 (1962); *National Upholstery Co. v. Padgett*, 108 Ga. App. 857, 134 S.E.2d 856 (1964); *Kibbey Chevrolet, Inc. v. Anderson*, 111 Ga. App. 90, 140 S.E.2d 564 (1965); *National Upholstery Co. v. Padgett*, 111 Ga. App. 842, 143 S.E.2d 494 (1965); *Crosby Aeromarine, Inc. v. Hyde*, 115 Ga. App. 836, 156 S.E.2d 106 (1967); *Grubbs v. Duskin*, 118 Ga. App. 82, 162 S.E.2d 762 (1968); *Skinner v. Medlock*, 119 Ga. App. 140, 166 S.E.2d 373 (1969); *Hyde v. Crosby Aeromarine, Inc.*, 119 Ga. App. 560, 167 S.E.2d 614 (1969); *Davis v. Southland Auto Salvage, Inc.*, 138 Ga. App. 571, 226 S.E.2d 749 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 200, 206. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 772, 904 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 774, 775, 778, 779. 61 C.J.S., Motor Vehicles, §§ 1216, 1219, 1317, 1344, 1345, 1369.

ALR. — Liability or recovery in auto-

mobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 ALR3d 13.

Liability or recovery in automobile negligence action as affected by motor vehicles being driven or parked without dimming lights, 63 ALR3d 824.

40-8-29. Spotlights, foglights, and auxiliary lights permitted.

(a) Any motor vehicle may be equipped with not to exceed one spotlight, and no lighted spotlight shall be aimed and used upon any approaching vehicle. It shall be unlawful for any person except law enforcement officers and persons licensed under Chapter 38 of Title 43 to operate a spotlight from any moving vehicle on any highway or public roadway.

(b) Any motor vehicle may be equipped with not to exceed two foglights mounted on the front at a height not less than 12 inches nor

more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of four inches below the level of the center of the light from which it comes.

(c) Any motor vehicle may be equipped with not to exceed one auxiliary passing light mounted on the front at a height not less than 24 inches nor more than 42 inches above the level surface upon which the vehicle stands, and every such auxiliary passing light shall meet the requirements and limitations set forth in this article.

(d) Any motor vehicle may be equipped with not to exceed one auxiliary driving light mounted on the front at a height not less than 16 inches nor more than 42 inches above the level surface upon which the vehicle stands, and every such auxiliary driving light shall meet the requirements and limitations set forth in this article. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 111; Code 1933, § 68E-210, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-29, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1983, p. 3, § 29; Ga. L. 1992, p. 6, § 40.)

JUDICIAL DECISIONS

Evidence insufficient to support conviction. — In the absence of any evidence indicating that it was the defendant, rather than the defendant's passenger, who used the spotlight found under

the passenger's feet, the evidence was insufficient to support a conviction for a violation of O.C.G.A. § 40-8-29(a). *Firsanov v. State*, 270 Ga. 873, 513 S.E.2d 184 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 203, 204.

C.J.S. — 60A C.J.S., Motor Vehicles, § 772 et seq.

40-8-30. Standards for multiple-beam road lighting equipment.

Except as hereinafter provided in this part, the headlights or the auxiliary driving light or the auxiliary passing light or combination thereof on motor vehicles other than motorcycles or motor driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations, and such lights may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

- (1) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading;

(2) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver;

(3) Every new motor vehicle other than a motorcycle or a motor driven cycle registered in this state which has multiple-beam road lighting equipment shall be equipped with a beam indicator which shall be lighted whenever the uppermost distribution of light from the headlights is in use and shall not otherwise be lighted. Such indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 113; Ga. L. 1955, Ex. Sess., p. 25, § 1; Code 1933, § 68E-211, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-30, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, in the first sentence of paragraph (3), commas were deleted following “indicator” and “use.”

Pursuant to Code Section 28-9-5, in 1991, in the introductory language and in paragraph (3), “motor driven” was substituted for “motor-driven.”

JUDICIAL DECISIONS

Cited in *Southeastern Liquid Fertilizer Co. v. Mock*, 92 Ga. App. 270, 88 S.E.2d 531 (1955); *Wood v. Atlantic Coast Line R.R.*, 192 F. Supp. 351 (M.D. Ga. 1960); *Mathis v. Patrick*, 109 Ga. App. 376, 136 S.E.2d 166 (1964); *Cupp v. State*, 111 Ga. App. 722, 143 S.E.2d 197 (1965); *Seaboard C.L.R.R. v. Sheffield*, 127 Ga. App. 580,

194 S.E.2d 484 (1972); *Owens-Illinois, Inc. v. Bryson*, 138 Ga. App. 78, 225 S.E.2d 475 (1976); *Rothrock v. Martin*, 138 Ga. App. 16, 225 S.E.2d 489 (1976); *Ingram v. Jackson*, 153 Ga. App. 201, 265 S.E.2d 29 (1980); *Johnson v. UPS*, 616 F.2d 161 (5th Cir. 1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 203 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 ALR3d 13.

40-8-31. Use of multiple-beam road lighting equipment.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Code Section 40-8-20, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a

safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever a driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in paragraph (2) of Code Section 40-8-30 shall be deemed to avoid glare at all times, regardless of road contour and loading; and

(2) Whenever the driver of a vehicle follows another vehicle within 200 feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in paragraph (1) of Code Section 40-8-30. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 114; Ga. L. 1955, Ex. Sess., p. 25, § 1; Code 1933, § 68E-212, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-31, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1989, p. 14, § 40.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-302 are included in the annotations for this Code section.

Duty to dim headlights. — It is the duty of one operating a motor vehicle along a public highway in this state to have the vehicle equipped with a suitable device for dimming or changing the focus of the headlights thereon so as to prevent dangerously glaring or dazzling rays from the lamps thereof to affect the eyesight of the driver of an approaching vehicle, and to dim the lights, or change the focus when necessary. *Fender v. Drost*, 62 Ga. App. 345, 7 S.E.2d 800 (1940) (decided under former Code 1933, § 68-302).

As the trial court erred by holding that the defendant did not have a duty to dim the defendant's vehicle lights because the police officer stopped at the stop light was not an oncoming vehicle, the defendant's motion to suppress the results of a breath test for a driving under the influence charge was improperly granted. *State v. Mussell*, 257 Ga. App. 533, 571 S.E.2d 518 (2002).

What constitutes negligence per se. — While the failure to have one's motor

vehicle equipped with a suitable device for dimming or changing the focus of the headlights of the vehicle is negligence per se, the failure to dim the lights or change their focus is not negligence per se, as the requirement to dim is by inference and not by mandate. *Williams v. Chastain*, 91 Ga. App. 167, 85 S.E.2d 92 (1954) (decided under former Code 1933, § 68-302).

Negligence is question for jury. — Whether or not one's failure to dim the lights of one's motor vehicle while on one of the public highways of this state as one meets an approaching automobile is ordinary negligence or not is a question for determination by the jury under all the attendant circumstances of each case. *Williams v. Chastain*, 91 Ga. App. 167, 85 S.E.2d 92 (1954) (decided under former Code 1933, § 68-302).

Sentence not excessive. — Sentence of 12 months probation and a \$75 fine for speeding, and a concurrent 12 months probation for failure to dim headlights, was within statutory limits, and was particularly merited in case of a defendant who had two prior DUI arrests and who, while acquitted of DUI in the instant case, had a blood alcohol level of .096 to .099 at

the time of the defendant's arrest. *Pitts v. State*, 231 Ga. App. 9, 498 S.E.2d 534 (1998).

Cited in Central of Ga. Ry. v. Hurst, 115

Ga. App. 271, 154 S.E.2d 641 (1967); *McConnell v. State*, 188 Ga. App. 653, 374 S.E.2d 111 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 203 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 343 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Liability or recovery in auto-

mobile negligence action as affected by motor vehicles being driven or parked without dimming lights, 63 ALR3d 824.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle, 64 ALR3d 551.

40-8-32. Lights on vehicles of rural mail carriers.

Any automobile operated by a rural mail carrier for the purpose of delivering mail shall be authorized to display two amber colored lights so as to warn approaching travelers to decrease their speed because of the danger of colliding with such mail carrier as he stops and starts along the edge of the highway. Such amber lights should be visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle. (Ga. L. 1961, p. 202, § 1; Code 1933, § 68E-213, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-32, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1997, p. 143, § 40.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 203 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 26.

40-8-33. Lights on farm tractors and unlicensed three-wheeled motorcycles used only for agricultural purposes; restrictions on trailers and semitrailers otherwise exempt under Code Section 40-8-1; no duty on manufacturers of lighting systems.

(a) Every farm tractor and every three-wheeled motorcycle used only for agricultural purposes equipped with an electric lighting system shall at all times mentioned in Code Section 40-8-20 display a red taillight and either multiple-beam or single-beam road lighting equipment meeting the requirements of Code Sections 40-8-23 and 40-8-30, respectively.

(b) When operated or towed upon a highway, roadway, or street at any time from a half-hour after sunset to a half-hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible

persons and vehicles on the highway, roadway, or street at a distance of 500 feet to the rear, every trailer and semitrailer which would otherwise be exempt from this article as an implement of husbandry under Code Section 40-8-1 either shall comply with Code Section 40-8-23, relating to taillights, or shall be equipped with an operating red flashing light which is plainly visible from a distance of 500 feet to the rear and which is either permanently or temporarily fixed to the rear of such trailer or semitrailer or shall be accompanied by an escort vehicle which is equipped with one or more operating red or amber flashing lights that are visible from a distance of 500 feet and which shall follow such trailer or semitrailer.

(c) Nothing in this Code section shall be construed to impose a duty on a manufacturer of an implement of husbandry under Code Section 40-8-1 to install an electric lighting system, taillights, or red flashing lights or otherwise equip implements of husbandry to be in compliance with the provisions of this Code section at the time of manufacture or sale; it being the intent of this Code section to place a duty on operators of the equipment only under specified circumstances and conditions, and not on manufacturers. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 102; Ga. L. 1973, p. 598, § 3; Code 1933, § 68E-214, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-33, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329, § 5; Ga. L. 1989, p. 298, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “taillight” was substituted for “tail light” in subsection (a), “half-hour” was substituted for

“half hour” in two places in subsection (b), and “taillights” was substituted for “tail lights” in subsections (b) and (c).

JUDICIAL DECISIONS

Cited in *Plyler v. Smith*, 193 Ga. App. 114, 386 S.E.2d 881 (1989).

40-8-34. Color in lighting equipment.

The color in all lighting equipment covered in this title shall be in accordance with Society of Automotive Engineers (SAE) Standard J578, April, 1965, as thereafter revised or amended. (Ga. L. 1974, p. 633, § 1; Code 1933, § 68E-215, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-34, enacted by Ga. L. 1982, p. 165, § 10.)

40-8-35. Operating low-speed vehicles on highway requires amber strobe light.

Any low-speed vehicle operated on the highways of this state shall display an amber strobe light so as to warn approaching travelers to decrease their speed because of the danger of colliding with such

vehicle. Such amber strobe light shall be mounted in a manner so as to be visible under normal atmospheric conditions from a distance of 500 feet from the front and rear of such vehicle. (Code 1981, § 40-8-35, enacted by Ga. L. 2002, p. 512, § 13.)

PART 3

BRAKES

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 108, 199, 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 531, 539 et seq., 567, 582, 753 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 11, 43. 60 C.J.S., Motor Vehicles, § 322. 60A C.J.S., Motor Vehicles, §§ 736, 737.

ALR. — Effect of defective brakes on liability for injury, 170 ALR 611.

Automobiles: liability of owner or operator of motor vehicle for injury, death, or property damage resulting from defective brakes, 40 ALR3d 9.

Products liability: personal injury or death allegedly caused by defect in braking system in motor vehicle, 99 ALR3d 179.

40-8-50. Brakes required.

(a) As used in this Code section, the term:

(1) “Gross combination weight rating (GCWR)” means the combined gross vehicle weight ratings of all vehicles in a combination of vehicles.

(2) “Gross vehicle weight rating (GVWR)” means the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single or a combination (articulated) vehicle, the actual gross weight, or registered gross weight, whichever is greater.

(3) “Hazardous material” has the meaning provided by Chapter 51 of Title 49 of the United States Code Annotated.

(4) “Surge brakes” means a self-contained, permanently closed hydraulic brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer to slow down or stop the towed vehicle.

(b) Every motor vehicle, other than a motorcycle or motor driven cycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any

way, they shall be so constructed that failure on any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(c) Every motorcycle and motor driven cycle manufactured after January 1, 1974, when operated upon a highway, shall be equipped with at least two brakes which may be operated by hand or foot.

(d) Except as otherwise provided in subsection (e) of this Code section, every trailer or semitrailer of 3,000 pounds gross weight or more shall be equipped with brakes on all wheels. Any farm trailer with two or more wheels, pulled from a tongue, used in or operated for farm purposes, including transporting fertilizer and agricultural materials to the farm, shall not be required to have an independent braking system thereon, provided such farm trailer shall not weigh over 4,000 pounds when empty.

(e) Any trailer or semitrailer may utilize surge brakes, subject to the following conditions and limitations:

(1) The gross vehicle weight rating or the actual gross weight of any surge brake equipped trailer or semitrailer does not exceed 20,000 pounds;

(2) For trailers and semitrailers with a gross vehicle weight rating of 12,000 pounds or less, the gross vehicle weight rating of any such trailer shall not exceed 1.75 times the gross vehicle weight rating of the towing vehicle;

(3) For trailers and semitrailers with a gross vehicle weight rating greater than 12,000 pounds, but less than 20,001 pounds, the gross vehicle weight rating of any such trailer shall not exceed 1.25 times the gross vehicle weight rating of the towing vehicle;

(4) The actual gross weight of the trailer or semitrailer and load does not exceed the manufacturer's gross vehicle weight rating;

(5) The trailer or semitrailer brakes must be designed and connected in such a manner that in case of accidental breakaway of the towed vehicle the brakes shall apply automatically; and

(6) For vehicles used for commercial purposes, the vehicle or combination of vehicles complies in all other respects with licensing, insurance, registration, identification, driver and vehicle safety, and hazardous materials regulations of the Department of Public Safety and United States Department of Transportation applicable to such vehicles or combination of vehicles.

(f) Where there is no manufacturer's gross vehicle weight rating or the manufacturer's gross vehicle weight rating is exceeded in violation of paragraph (4) of subsection (e) of this Code section, then the actual

gross weight of the trailer or semitrailer shall be used to determine compliance with paragraphs (2) and (3) of subsection (e) of this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 115; Ga. L. 1965, p. 406, § 1; Ga. L. 1970, p. 438, § 1; Ga. L. 1974, p. 422, § 1; Code 1933, § 68E-301, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-50, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2000, p. 809, § 1; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 19-2/HB 501; Ga. L. 2009, p. 449, § 3A/SB 128.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “motor driven” was substituted for “motor-driven”

in subsections (a) and (b) (now subsections (b) and (c).

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770(50) and former Code 1933, § 68-302 are included in the annotations for this Code section.

Operation without brakes as negligence per se. — Operation of a truck along the public streets not equipped with efficient and serviceable brakes constituted negligence per se. *Orange Crush Bottling Co. v. Smith*, 35 Ga. App. 92, 132 S.E. 259 (1926) (decided under former Code 1910, § 1770(50)).

Former Code 1933, § 68-302 should be construed to make it an act of negligence per se to operate a vehicle on a public thoroughfare without the required brakes. *Cruse v. Taylor*, 89 Ga. App. 611, 80 S.E.2d 704 (1954) (decided under former Code 1933, § 68-302).

Operation of a bus in a manner which constitutes a violation of former Code 1933, § 68E-301 prima facie establishes negligence per se in the absence of a valid defense. *Johnson v. McAfee*, 151 Ga. App. 774, 261 S.E.2d 708 (1979) (see O.C.G.A. § 40-8-50).

Duty to keep proper brakes imposed on owner. — Statutory duty to

keep an automobile equipped with proper brakes is imposed on the owner, and the owner is liable for any injuries proximately caused by the defective condition of the brakes if the owner permits another person to operate the vehicle while the vehicle is in that condition. *Gregory v. Ross*, 214 Ga. 306, 104 S.E.2d 452 (1958).

Cited in *Harris v. Combs*, 96 Ga. App. 638, 101 S.E.2d 144 (1957); *Sims v. Hoff*, 106 Ga. App. 626, 127 S.E.2d 679 (1962); *Borochoff v. Russell*, 108 Ga. App. 266, 132 S.E.2d 861 (1963); *Juhan v. C.W. Matthews Contracting Co.*, 114 Ga. App. 608, 152 S.E.2d 623 (1966); *Shirey v. Woods*, 118 Ga. App. 851, 165 S.E.2d 891 (1968); *Glynn Plymouth, Inc. v. Davis*, 120 Ga. App. 475, 170 S.E.2d 848 (1969); *Taylor v. Buckhead Glass Co.*, 120 Ga. App. 663, 171 S.E.2d 779 (1969); *Cravey v. J.S. Gainer Pulpwood Co.*, 128 Ga. App. 465, 197 S.E.2d 171 (1973); *Lewis v. Harry White Ford, Inc.*, 129 Ga. App. 318, 199 S.E.2d 599 (1973); *White v. Seaboard C.L.R.R.*, 139 Ga. App. 833, 229 S.E.2d 775 (1976); *Hurst v. J.P. Colley Contractors*, 167 Ga. App. 56, 306 S.E.2d 54 (1983); *Cantrell v. U-Haul Co.*, 224 Ga. App. 671, 482 S.E.2d 413 (1997).

40-8-51. Means of operation.

(a) One of the means of brake operation shall consist of a mechanical connection from the operating lever to the brake shoes or bands, and this brake shall be capable of holding the vehicle or combination of vehicles stationary under any condition of loading on any upgrade or downgrade upon which it is operated.

(b) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 115; Code 1933, § 68E-302, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-51, enacted by Ga. L. 1982, p. 165, § 10.)

40-8-52. Parking brakes.

Every 1966 model motor vehicle and all subsequent model motor vehicles shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power, provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors, and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes. (Ga. L. 1970, p. 438, § 2; Ga. L. 1971, p. 515, § 1; Code 1933, § 68E-303, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-52, enacted by Ga. L. 1982, p. 165, § 10.)

RESEARCH REFERENCES

ALR. — Failure to set brakes, or maintain adequate brakes, as causing accidental runaway of parked motor vehicle, 42 ALR3d 1252.

40-8-53. Performance ability of brakes.

(a) Except as provided for in subsection (b) of this Code section, every motor vehicle or combination of motor drawn vehicles shall be capable at all times and under all conditions of loading of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake within the distances specified in this Code section or shall be capable of being decelerated at a sustained rate corresponding to these distances.

	<u>Feet to Stop From 20 Miles Per Hour</u>	<u>Deceleration in Feet Per Second</u>
Vehicles or combinations of vehicles having brakes on all wheels	30	14
Vehicles or combinations of vehicles not having brakes on all wheels	40	10.7

(b) The brake performance ability for commercial motor vehicles shall be as provided for in the federal motor carrier safety regulations contained in 49 C.F.R. 393.52 and adopted by the commissioner of public safety pursuant to Code Section 40-1-8. Commercial motor vehicles shall be capable at all times and under all conditions of loading of being stopped on a dry, smooth, level road free from loose material upon application of the service (foot) brake within the distances specified in those rules. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 115; Ga. L. 1982, p. 3, § 40; Code 1933, § 68E-304, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-53, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1994, p. 97, § 40; Ga. L. 2011, p. 479, § 14/HB 112.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “motor drawn” was substituted for “motor-drawn” (now in subsection (a)).

40-8-54. Maintenance.

All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 115; Code 1933, § 68E-305, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-54, enacted by Ga. L. 1982, p. 165, § 10.)

JUDICIAL DECISIONS

Lack of maintenance program for school bus. — When an owner was operating a used bus (particularly one whose past maintenance history was unknown) as a school bus, whether the owner had exercised ordinary diligence if the owner failed to establish an effective maintenance program to replace periodically all deteriorating brake parts was a genuine issue of material fact sufficient to preclude summary judgment for the owner. Kirby v. Spate, 214 Ga. App. 433, 448 S.E.2d 7 (1994).

Cited in Eastern Dehydrating Co. v.

Brown, 112 Ga. App. 349, 145 S.E.2d 274 (1965).

PART 4

HORNS, EXHAUST SYSTEMS, MIRRORS, WINDSHIELDS, TIRES, SAFETY BELTS, ENERGY ABSORPTION SYSTEMS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Defective Tire, 39 POF2d 209.

Crashworthiness of Motor Vehicle — Defective Automobile Seatbelts, 4 POF3d 131.

Crashworthiness of Motor Vehicle — Defective Airbag System, 21 POF3d 1.

Defective Automobile Child Safety Restraint, 21 POF3d 115.

Proof of Automobile Design Defect, 59 POF3d 73.

Proof of Injury Resulting from Defects in Child Safety Seat, 77 POF3d 85.

Am. Jur. Trials. — Defective Tire Litigation, 34 Am. Jur. Trials 603.

The Seatbelt Defense, 35 Am. Jur. Trials 349.

Auto Product Liability: Defective Door Latch, 36 Am. Jur. Trials 339.

Auto Product Liability: Defective Seatbelt, 37 Am. Jur. Trials 401.

Automobile Airbag Malfunction Litigation: Practice and Strategy, 83 Am. Jur. Trials 1.

40-8-70. Horns and warning devices.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when it is reasonably necessary to ensure safe operation, give audible warning with his or her horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell except as otherwise permitted in this Code section and Code Section 40-8-94.

(c) No vehicle shall be equipped with a theft alarm signal device which is so arranged that it can be used by the driver as an ordinary warning signal. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 116; Code 1933, § 68E-401, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-70, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2001, p. 4, § 40.)

JUDICIAL DECISIONS

Failure to blow horn may be negligence. — Driver who is conscious of the presence of a pedestrian in the street may be found negligent in failing to blow the

horn or give such other warning of the approach of the automobile as may be reasonably necessary. *Lott v. Herrin*, 120 Ga. App. 796, 172 S.E.2d 203 (1969).

Unlawful siren use not negligence per se. — In a negligence action arising out of a motor vehicle collision, the defendant's unlawful use of a siren was not negligence per se. There had to be evidence of a causal relationship between the defendant's failure to obtain a permit for the siren and the collision. *Pryor v. Phillips*, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

Cited in *Collins v. Alewine*, 102 Ga. App. 172, 115 S.E.2d 721 (1960); *Myers v. Pearce*, 102 Ga. App. 235, 115 S.E.2d 842 (1960); *Marsh v. Hargrove*, 103 Ga. App.

264, 118 S.E.2d 866 (1961); *Grayson v. Yarbrough*, 103 Ga. App. 243, 119 S.E.2d 41 (1961); *Fuller v. Self*, 107 Ga. App. 664, 131 S.E.2d 241 (1963); *Hughes v. Brown*, 111 Ga. App. 676, 143 S.E.2d 30 (1965); *Howard v. Hall*, 112 Ga. App. 247, 145 S.E.2d 70 (1965); *Bennett v. Haley*, 132 Ga. App. 512, 208 S.E.2d 302 (1974); *Blizzard v. Bennett*, 143 Ga. App. 568, 239 S.E.2d 223 (1977); *Hurst v. J.P. Colley Contractors*, 167 Ga. App. 56, 306 S.E.2d 54 (1983); *Frasard v. State*, 278 Ga. App. 352, 629 S.E.2d 53 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 200. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 597.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 623. 61 C.J.S., Motor Vehicles, § 1208.

ALR. — Automobiles: duty and liability

with respect to giving audible signal at intersection, 21 ALR3d 268.

Automobiles: duty and liability with respect to giving audible signal before passing, 22 ALR3d 325.

Automobiles: duty and liability with respect to giving audible signal upon approaching pedestrian, 24 ALR3d 183.

40-8-71. Exhaust system; prevention of noise, smoke, and fumes.

(a) Every motor vehicle shall at all times be equipped with an exhaust system, in good working order and in constant operation, meeting the following specifications:

(1) The exhaust system shall include the piping leading from the flange of the exhaust manifold to and including the muffler or mufflers and tail pipes;

(2) The use of flexible pipe shall be prohibited except on diesel tractors or according to manufacturers' original specifications;

(3) The exhaust emission point shall extend beyond the rear or outside of the passenger compartment. The trunk shall be considered as part of the passenger compartment;

(4) The exhaust system and its elements shall be securely fastened, including the consideration of missing or broken hangers; and

(5) There shall be no part of the exhaust system passing through the passenger compartment or any exposed stack so located that any individual entering or leaving the vehicle may be burned.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(c) It shall be unlawful for any person to sell or offer for sale any muffler which causes excessive or unusual noise or annoying smoke or any muffler cutout, bypass, or similar device for use on a motor vehicle or for any person to use, to sell, or to offer for sale any motor vehicle equipped with any such muffler, muffler cutout, bypass, or similar device. Any person violating this subsection shall be guilty of a misdemeanor. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 117; Ga. L. 1962, p. 653, § 1; Ga. L. 1971, p. 779, § 1; Code 1933, § 68E-402, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-71, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1994, p. 97, § 40.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 201. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 746, 966, 969. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 52. 60A C.J.S., Motor Vehicles, § 621.

ALR. — Public regulation requiring mufflers or similar noise-preventing de-

vices on motor vehicles, aircraft, or boats, 49 ALR2d 1202.

Liability of motor vehicle owner or operator for personal injury or death of passenger or guest occasioned by inhalation of gases or fumes from exhaust, 56 ALR2d 1099.

Products liability: motor vehicle exhaust systems, 72 ALR4th 62.

40-8-72. Mirrors.

(a) Except as provided in subsection (b) of this Code section, every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such vehicle.

(b) Every commercial motor vehicle shall be equipped with two rear-vision mirrors meeting the requirements of the federal motor vehicle safety standards contained in 49 C.F.R. 571.111 in effect at the time of manufacture, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle; provided, however, that only one outside mirror shall be required, which shall be on the driver's side, on a commercial motor vehicle which is so constructed that the driver has a view to the rear by means of an interior mirror. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 118; Code 1933, § 68E-403, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-72, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2011, p. 479, § 15/HB 112.)

JUDICIAL DECISIONS

Cited in *Coopers', Inc. v. Holmes*, 126 Ga. App. 597, 191 S.E.2d 562 (1972); *State v. Reid*, 313 Ga. App. 633, 722 S.E.2d 364 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 745.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 621, 667, 699, 701.

ALR. — Liability for failure to provide motor vehicle with adequate rearview mirror, 27 ALR2d 1040.

40-8-73. Windshields and windshield wipers.

(a) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side windows, or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(b) The windshield of every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture therefrom, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

(d) No opaque or solid material including, but not limited to, cardboard, plastic, and taped glass shall be employed in lieu of a glass windshield or window.

(e) No motor vehicle shall be operated with a windshield or rear window having a starburst or spider webbing effect greater than three inches by three inches. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 119; Code 1933, § 68E-404, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-73, enacted by Ga. L. 1982, p. 165, § 10.)

JUDICIAL DECISIONS

Violation justified traffic stop. — Traffic stop was justified when officers noticed that a defendant's car had a ten-inch "starburst" crack in the car's windshield; under O.C.G.A. § 40-8-73(e), a vehicle was not to be operated with a windshield or rear window having a starburst or spider webbing effect greater

than three inches by three inches. *Glenn v. State*, 285 Ga. App. 872, 648 S.E.2d 177 (2007).

Cited in *Vickers v. State*, 234 Ga. App. 563, 507 S.E.2d 810 (1998); *Darby v. State*, 239 Ga. App. 492, 521 S.E.2d 438 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 202, 315, 316. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 584, 778, 779, 898.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 18, 43 et seq. 60A C.J.S., Motor Vehicles, §§ 623, 665, 676, . 61 C.J.S., Motor

Vehicles, § 951. 61A C.J.S., Motor Vehicles, § 1380.

ALR. — Impairment of driver's view through windshield as affecting liability for automobile accident, 10 ALR 299.

Motor vehicle operator's liability for accident occurring while driving with vision

obscured by smoke or steam, 32 ALR4th
933.

40-8-73.1. Affixing of materials which reduce light transmission or increase light reflectance through windows or windshields.

(a) As used in this Code section, the term:

(1) "Light reflectance" means the ratio of the amount of total light that is reflected outward by a product or material to the amount of total light falling on the product or material.

(2) "Light transmission" means the ratio of the amount of total light, expressed in percentages, which is allowed to pass through a surface to the amount of light falling on the surface.

(3) "Manufacturer" means a person who produces or assembles a vehicle glass-coating material or who fabricates, laminates, or tempers a safety-glazing material, which material reduces light transmission.

(4) "Material" means any transparent product or substance which reduces light transmission.

(5) "Multipurpose passenger vehicle" means a motor vehicle designed to carry ten persons or less which is constructed on a truck chassis or with special features for occasional off-road operation.

(b) Except as provided in this Code section, it shall be unlawful for any person to operate a motor vehicle in this state:

(1) Which has material and glazing applied or affixed to the front windshield, which material and glazing when so applied or affixed reduce light transmission through the windshield; or

(2) Which has material and glazing applied or affixed to the rear windshield or the side or door windows, which material and glazing when so applied or affixed reduce light transmission through the windshield or window to less than 32 percent, plus or minus 3 percent, or increase light reflectance to more than 20 percent.

(c) The provisions of subsection (b) of this Code section shall not apply to:

(1) Adjustable sun visors which are mounted forward of the side windows and are not attached to the glass;

(2) Signs, stickers, or other matter which is displayed in a seven-inch square in the lower corner of the windshield farthest removed from the driver or signs, stickers, or other matter which is

displayed in a five-inch square in the lower corner of the windshield nearest the driver;

(3) Direction, destination, or termination signs upon a passenger common carrier motor vehicle if the signs do not interfere with the driver's clear view of approaching traffic;

(4) Any transparent item which is not red or amber in color which is placed on the uppermost six inches of the windshield;

(5) Any federal, state, or local sticker or certificate which is required by law to be placed on any windshield or window;

(6) The rear windshield or the side or door windows, except those windows to the right and left of the driver of:

(A) A multipurpose passenger vehicle;

(B) A school bus, any other bus used for public transportation, and any bus or van owned or leased by any religious or any nonprofit organization duly incorporated under the laws of this state;

(C) Any limousine owned or leased by a public or private entity; or

(D) Any other vehicle, the windows or windshields of which have been tinted or darkened before factory delivery or permitted by federal law or regulation;

(7) Any law enforcement vehicle;

(8) Any vehicle that displays a valid special license plate issued to a government official under Code Section 40-2-61, 40-2-63, or 40-2-64;

(9) Any vehicle owned or operated by the state or a political subdivision thereof and that displays a valid license plate issued pursuant to Code Section 40-2-37; or

(10) Any vehicle operated in the course of business by a person licensed or registered under Chapter 38 of Title 43, relating to private detective and private security businesses.

(d) The Department of Public Safety may, upon application from a person required for medical reasons to be shielded from the direct rays of the sun and only if such application is supported by written attestation of such fact from a person licensed to practice medicine under Chapter 34 of Title 43 or a person certified as an optometrist under Chapter 30 of Title 43, issue an exemption from the provisions of this Code section for any motor vehicle owned by such person or in which such person is a habitual passenger. The exemption shall be issued with such conditions and limitations as may be prescribed by the Department of Public Safety.

(e) No person shall install any material upon the windshields or windows of any motor vehicle, the installation of which would result in a reduction of light transmission or an increase in light reflectance in violation of subsection (b) of this Code section.

(f) Notwithstanding any other provision of this Code section, commercial motor vehicles operated in this state are subject to the specifications of or limitations relating to windshield or window glazing or the application of light reducing or reflectance material to the windshield or windows as provided for in the federal motor carrier safety regulations contained in 49 C.F.R. 393.60 and adopted by the commissioner of public safety pursuant to Code Section 40-1-8.

(g) The Department of Public Safety is authorized to promulgate such rules and regulations as may be necessary to carry out the provisions of this Code section.

(h) Any person who violates subsection (b) or (e) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-8-73.1, enacted by Ga. L. 1983, p. 1300, § 1; Ga. L. 1984, p. 1211, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 896, § 1; Ga. L. 1992, p. 2785, § 27; Ga. L. 2000, p. 951, § 5B-3; Ga. L. 2005, p. 331, § 1/HB 20; Ga. L. 2005, p. 334, § 19-3/HB 501; Ga. L. 2006, p. 782, § 1/SB 570; Ga. L. 2007, p. 206, § 1/HB 79; Ga. L. 2011, p. 479, § 16/HB 112.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2005, p. 331, § 1/HB 20, irreconcilably conflicted with and was treated as superseded by Ga. L. 2005, p. 334, § 19-3/HB 501. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2005, “Public” was substituted for “Motor Vehicle” following “The Department of” in subsection (f) (now subsection (g)).

Administrative rules and regulations. — Safety Glazing Material and Window Tinting Manufacturer and Installer Requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-22.

Law reviews. — For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005).

JUDICIAL DECISIONS

Constitutionality. — Appellate court’s finding that O.C.G.A. § 40-8-73.1 was unconstitutional as no rational connection existed between the residence of the driver of a vehicle and the goal of improving law enforcement officer safety during traffic stops, did not warrant suppression of evidence seized during a traffic stop of the defendant’s vehicle, because the investigating officer had reason to believe that the vehicle’s windows were tinted darker than that permitted by the statute. *Ciak v. State*, 278 Ga. 27, 597 S.E.2d 392 (2004).

Basis for traffic stop. — Trial court erred in granting the defendants’ motion to suppress the drug evidence seized following a traffic stop for a violation of O.C.G.A. § 40-8-73.1 as an officer’s observations of a vehicle’s dark tinted windows, and belief that such violated the statute were sufficient to justify the stop; moreover, a free air search by a drug-sniffing dog did not violate the defendants’ Fourth Amendment rights. *State v. Simmons*, 283 Ga. App. 141, 640 S.E.2d 709 (2006).

Convictions for violating 18 U.S.C.

§§ 472 and 922(g) were affirmed since the district court did not err by denying the defendant's motion to suppress evidence because the vehicle stop did not violate the Fourth Amendment; a police officer had a reasonable suspicion that the defendant's vehicle violated the Georgia window tint law, O.C.G.A. § 40-8-73.1(b)(2). *United States v. Moody*, 240 Fed. Appx. 858 (11th Cir. 2007) (Unpublished).

When an officer decided to stop the defendant's truck, the officer knew state law prohibited excessive window tinting and that the officer could not see the driver or inside the truck, thus, the officer reasonably believed the defendant had violated O.C.G.A. § 40-8-73.1(b), thus there was no error in denying the defendant's Fourth Amendment motion to suppress in connection with the defendant's drug conviction under 21 U.S.C. § 841(a)(1). *United States v. Garcia*, 284 Fed. Appx. 791 (11th Cir. 2008) (Unpublished).

Trial court's denial of a defendant's motion to suppress the evidence of drugs found in the defendant's vehicle was upheld as the trial court properly determined that the stop of the defendant's vehicle was not pretextual in that two officers observed the defendant's vehicle with tinted windows and following another vehicle too closely. *Pollack v. State*, 294 Ga. App. 400, 670 S.E.2d 165 (2008).

Trial court did not err in denying the defendant's motion to suppress after finding that the excessive-window-tinting statute, O.C.G.A. § 40-8-73.1(b), was unconstitutional because an officer had a reasonable articulable suspicion to justify the traffic stop; the officer observed that the defendant's vehicle had darkly tinted windows and reasonably believed that to be in violation of § 40-8-73.1, and the fact that the statute was later found to be unconstitutional did not render the stop invalid. *Christy v. State*, 315 Ga. App. 647, 727 S.E.2d 269 (2012).

When cocaine was found during a traffic stop after a dog sniff, suppression was not warranted because the officer had probable cause to believe that the car had illegal window tint. *United States v. Whitlock*, No. 12-10989, 2012 U.S. App. LEXIS 21853 (11th Cir. Oct. 19, 2012) (Unpublished).

Officer's traffic stop of the defendants' vehicle was not pretextual for purposes of their request for suppression because it was undisputed that the officer believed that the vehicle had a window tint violation which, upon testing the window, was confirmed. *State v. Price*, 322 Ga. App. 778, 746 S.E.2d 258 (2013).

Cited in *Williams v. State*, 293 Ga. App. 842, 668 S.E.2d 825 (2008); *Sommese v. State*, 299 Ga. App. 664, 683 S.E.2d 642 (2009); *Perry v. State*, 317 Ga. App. 885, 733 S.E.2d 57 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offense. — Offense in O.C.G.A. § 40-8-73.1, which provides that a resident who operates a motor vehicle in this state that has material applied to the windshield or front windows that restricts the amount of light

entering the vehicle shall be guilty of a misdemeanor, is designated as an offense for which persons charged with a violation shall be fingerprinted. 1984 Op. Att'y Gen. No. 84-44.

40-8-74. Tires.

(a) No vehicle equipped with solid rubber tires shall be used or transported on the highways, unless every solid rubber tire on such vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange on the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use:

(1) Farm machinery with tires having protuberances which will not injure the highway; and

(2) Tire chains of reasonable proportions or tires equipped with safety metal spike studs upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d) The transportation board and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks, or of farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this Code section.

(e) All tires:

(1) Shall have not less than $\frac{2}{32}$ inch tread measurable in all major grooves except that school buses and commercial vehicles shall have not less than $\frac{4}{32}$ inch tread measurable in all major grooves on the front tires and school buses shall have not less than $\frac{4}{32}$ inch tread measurable in all major grooves on the rear tires when there are only two tires on the rear; such measurements shall not be made where tie bars, humps, or fillets are located;

(2) Shall be free from any cuts, breaks, or snags on tread and sidewall deep enough to expose body cord; and

(3) Shall be free from bumps, bulges, or separations.

(f) No motor vehicle shall be operated on a public street or highway with tires that have been marked "not for highway use," "for racing purposes only," or "unsafe for highway use."

(g) Retreaded, regrooved, or recapped tires shall not be used upon the front wheels of buses. (Ga. L. 1927, p. 226, § 17; Code 1933, § 68-404; Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 120; Ga. L. 1970, p. 628, § 1; Code 1933, § 68E-405, enacted by Ga. L. 1982, p. 165, § 4; Ga. L. 1982, p. 3, § 40; Code 1981, § 40-8-74, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1992, p. 2785, § 28; Ga. L. 1993, p. 727, § 1; Ga. L. 2011, p. 479, § 17/HB 112.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "transportation board" was substituted for "Transportation Board" in subsection (d).

JUDICIAL DECISIONS

Inspector not entitled to official immunity in wrongful death suit arising out of faulty inspection of tires. — In a wrongful death and nuisance suit wherein the victim was killed while traveling in a taxi cab on a state highway, and the taxi cab had passed a mandatory city inspection the day prior, the trial court erred in granting summary judgment to the city inspector on the basis of official immunity as the inspector's act of inspecting the tires on the taxi cab was a ministerial function since the inspector was required to check for minimum tread depth and complete the inspection checklist before passing the vehicle as safe, which were simple, absolute, and definite tasks of a ministerial nature. As a result, the inspector was not entitled to official immunity and it was for the jury to determine if the inspector performed the tasks negligently. *Heller v. City of Atlanta*, 290 Ga. App. 345,

659 S.E.2d 617 (2008), *aff'd*, Ga. DOT v. Heller, 285 Ga. 262, 674 S.E.2d 914 (2009).
Decedent was killed when the taxi in which the decedent was riding spun out of control on a rain-slick road and hit a tree. The city employee who cleared the taxi for use on the roads was not shielded from liability by the doctrine of official immunity because: (1) inspection of tires was a ministerial act; (2) the employee did nothing to verify whether the taxi's badly worn tires had the legally required minimum amount of 3/32 inch of tread on the tires under O.C.G.A. § 40-8-74(e)(1); and (3) the employee had no "discretion" to ignore this minimum legal requirement. Ga. DOT v. Heller, 285 Ga. 262, 674 S.E.2d 914 (2009).

Cited in *Woodard v. State*, 289 Ga. App. 643, 658 S.E.2d 129 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Studded tire prohibited. — Studded tire is a metal tire within the meaning of O.C.G.A. § 40-8-74 and may not be used

on vehicles operated in this state. 1968 Op. Att'y Gen. No. 68-487.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 184, 193. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 539 et seq., 743, 1098.

C.J.S. — 60 C.J.S., Motor Vehicles, § 18. 60A C.J.S., Motor Vehicles, §§ 621, 622, 978, 691, 692.

40-8-75. Tire covers.

Every bus, truck, full trailer, semitrailer, and pole trailer, with the exception of local haul pulpwood trucks and local haul waste collection dumping trailers, shall be equipped with suitable metal protectors or substantial flexible flaps on the rearmost wheels to prevent, as far as practicable, such wheels from throwing dirt, gravel, rocks, water, or other materials on the windshields of following vehicles. Such protectors or flaps shall have a ground clearance of not more than one-half of the distance from the center of the rearmost axle to the center of the protector or flap under any conditions of loading of the vehicle and shall be at least as wide as the tires they are covering; provided, however, that if any such bus, truck, full trailer, semitrailer, or pole trailer is so designed and constructed that the foregoing requirements are accom-

plished by means of fenders, body construction, or other enclosures, then the protectors or flaps provided for in this Code section shall not be required. (Ga. L. 1979, p. 906, § 2; Code 1933, § 68E-406, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-75, enacted by Ga. L. 1982, p. 165, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 202, 204. **C.J.S.** — 60 C.J.S., Motor Vehicles, § 43 et seq.

40-8-76. Safety belts required as equipment; safety restraints for children.

(a) No new private passenger automobile manufactured after January 1, 1964, shall be sold to the general public in this state unless such automobile shall be equipped with two sets of safety belts for the front seat thereof. The safety belts may be installed by the manufacturer prior to delivery to the dealer, or they may be installed by the dealer.

(b)(1) Every driver who transports a child under eight years of age in a passenger automobile, van, or pickup truck, other than a taxicab as defined by Code Section 33-34-5.1 or a public transit vehicle as defined by Code Section 16-5-20, shall, while such motor vehicle is in motion and operated on a public road, street, or highway of this state, provide for the proper restraint of such child in a child passenger restraining system appropriate for such child's height and weight and approved by the United States Department of Transportation under provisions of Federal Motor Vehicle Safety Standard 213 in effect on January 1, 1983, or at the time of manufacture, subject to the following specific requirements and exceptions:

(A) Any such child weighing at least 40 pounds may be secured by a lap belt when:

(i) The vehicle is not equipped with both lap and shoulder belts; or

(ii) Not including the driver's seat, the vehicle is equipped with one or more lap and shoulder belts that are all being used to properly restrain other children;

(B) Any such child shall be properly restrained in a rear seat of the motor vehicle consistent with the requirements of this paragraph. If the vehicle has no rear seating position appropriate for correctly restraining a child or all appropriate rear seating positions are occupied by other children, any such child may be properly restrained in a front seat consistent with the requirements of this paragraph;

(C) A driver shall not be deemed to be complying with the provisions of this paragraph unless any child passenger restraining system required by this paragraph is installed and being used in accordance with the manufacturer's directions for such system; and

(D) The provisions of this paragraph shall not apply when the child's parent or guardian either obtains a physician's written statement that a physical or medical condition of the child prevents placing or restraining him or her in the manner required by this paragraph. If the parent or guardian can show the child's height is over 4 feet and 9 inches, such child shall be restrained in a safety belt as required in Code Section 40-8-76.1.

(2) Upon a first conviction of an offense under this subsection, the defendant shall be punished by a fine of not more than \$50.00, except in the case of a child who is six or seven years of age, if the defendant shows to the court having jurisdiction of the case that a child passenger restraining system meeting the applicable requirements of this subsection has been purchased by him or her after the time of the offense and prior to the court appearance, the court may waive or suspend the fine for such first conviction. This exception shall apply until January 1, 2012. Upon a second or subsequent conviction of an offense under this subsection, the defendant shall be punished by a fine of not more than \$100.00. No court shall impose any additional fees or surcharges to a fine for such a violation. The court imposing a fine for any violation of this Code section shall forward a record of the disposition of the cases to the Department of Driver Services for the sole purpose of data collection on a county by county basis.

(c) Violation of this Code section shall not constitute negligence per se nor contributory negligence per se. Violation of subsection (b) of this Code section shall not be the basis for cancellation of coverage or increase in insurance rates.

(d) The provisions of this Code section shall not apply to buses, as defined in paragraph (7) of Code Section 40-1-1, used in the transport of children over four years of age until July 1, 2012, provided that the bus is operated by a licensed or commissioned child care facility, has a current annual transportation safety inspection certificate as required by the appropriate licensing body, and has evidence of being inspected for use by a child care facility. If the bus is not a school bus, as defined in paragraph (55) of Code Section 40-1-1, or a multifunction school activities bus, as defined in 49 C.F.R. 571.3(B), each child over four years of age and under eight years of age shall be properly restrained by a child passenger restraining system. Multifunction school activities buses, as defined in 49 C.F.R. 571.3(B), shall not be required to transport children five years of age or older in a child passenger restraining system. (Ga. L. 1963, p. 366, § 2; Ga. L. 1964, p. 168, § 1;

Code 1933, § 68E-407, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-76, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1983, p. 1464, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 480, § 1; Ga. L. 1996, p. 469, § 2; Ga. L. 2000, p. 1246, § 17; Ga. L. 2001, p. 740, § 1; Ga. L. 2004, p. 716, § 1; Ga. L. 2011, p. 253, § 1/SB 88.)

Cross references. — Use of safety belts in passenger vehicles, § 40-8-76.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the correct spelling of “Violation” was substituted at the beginning of subsection (d) (now subsection (c)).

Pursuant to Code Section 28-9-5, in 2004, “C.F.R.” was substituted for “CFR” two times in subsection (d).

Editor’s notes. — Ga. L. 2004, p. 716, § 3, not codified by the General Assembly, provides: “It shall be the duty of the Governor’s Office of Highway Safety to implement and coordinate a program to inform parents and other citizens of Georgia of the provisions of subsection (b) of Code Section 40-8-76 and paragraph (3) of subsection (e) of Code Section 40-8-76.1 as amended by this Act. Such program shall be carried out prior to January 1, 2005. The Governor’s Office of Highway Safety shall solicit the cooperation and assistance of the Georgia State Patrol, Department of Motor Vehicle Safety, Georgia Sheriffs Association, Georgia Association of Chiefs of Police, Incorporated, Peace Officers’ Association of Georgia, Medical

College of Georgia, Georgia Hospital Association, Georgia Association of Educators, Professional Association of Georgia Educators, Georgia Parent-Teacher Association, and other appropriate organizations in educating the citizens of the state and in implementing, coordinating, and carrying out such provisions.”

Law reviews. — For article, “Federal Automotive Safety Standards and Georgia Products Liability Law: Conflict or Coexistence?,” see 26 Ga. St. B.J. 107 (1990).

For note on the 2001 amendment to O.C.G.A. § 40-8-76, see 18 Ga. St. U.L. Rev. 199 (2001).

For comment discussing *Bentzler v. Braun*, 34 Wis. 2d 362, 149 N.W.2d 626 (1967), as to plaintiff’s failure to use a seat belt as constituting contributory or comparative negligence in automobile injury cases, see 2 Ga. L. Rev. 110 (1967). For comment discussing *Brown v. Kendrick*, 192 So. 2d 49 (Fla. 1966), and suggesting contributory negligence ramifications of failure of guest passengers to use seatbelts in Georgia, see 18 Mercer L. Rev. 511 (1967).

JUDICIAL DECISIONS

Cited in In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 17, 189, 190. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 519, 541, 568 et seq. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

Am. Jur. Proof of Facts. — Proof of Injury Resulting from Defects in Child Safety Seat, 77 POF3d 85.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq.

ALR. — Automobile occupant’s failure to use seat belt as contributory negligence, 92 ALR3d 9.

Nonuse of automobile seatbelts as evidence of comparative negligence, 95 ALR3d 239.

Failure to use or misuse of automobile child safety seat or restraint system as affecting recovery for personal injury or death, 46 ALR5th 557.

Liability under state law for injuries

resulting from defective automobile seatbelt, shoulder harness, or restraint system, 48 ALR5th 1.

40-8-76.1. Use of safety belts in passenger vehicles.

(a) As used in this Code section, the term "passenger vehicle" means every motor vehicle, including, but not limited to, pickup trucks, vans, and sport utility vehicles, designed to carry ten passengers or fewer and used for the transportation of persons; provided, however, that such term shall not include motorcycles; motor driven cycles; or off-road vehicles or pickup trucks being used by an owner, driver, or occupant 18 years of age or older in connection with agricultural pursuits that are usual and normal to the user's farming operation.

(b) Each occupant of the front seat of a passenger vehicle shall, while such passenger vehicle is being operated on a public road, street, or highway of this state, be restrained by a seat safety belt approved under Federal Motor Vehicle Safety Standard 208.

(c) The requirement of subsection (b) of this Code section shall not apply to:

(1) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle, if the speed of the vehicle between stops does not exceed 15 miles per hour;

(2) A driver or passenger possessing a written statement from a physician that such person is unable, for medical or physical reasons, to wear a seat safety belt;

(3) A driver or passenger possessing an official certificate or license endorsement issued by the appropriate agency in another state or country indicating that the driver is unable for medical, physical, or other valid reasons to wear a seat safety belt;

(4) A driver operating a passenger vehicle in reverse;

(5) A passenger vehicle with a model year prior to 1965;

(6) A passenger vehicle which is not required to be equipped with seat safety belts under federal law;

(7) A passenger vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier;

(8) A passenger vehicle from which a person is delivering newspapers; or

(9) A passenger vehicle performing an emergency service.

(d) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts shall not be considered evidence of negligence or causation, shall not otherwise be considered by the finder of fact on any question of liability of any person, corporation, or insurer, shall not be any basis for cancellation of coverage or increase in insurance rates, and shall not be evidence used to diminish any recovery for damages arising out of the ownership, maintenance, occupancy, or operation of a motor vehicle.

(e)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, a person failing to comply with the requirements of subsection (b) of this Code section shall not be guilty of any criminal act and shall not be guilty of violating any ordinance. A violation of this Code section shall not be a moving traffic violation for purposes of Code Section 40-5-57.

(2) A person failing to comply with the requirements of subsection (b) of this Code section shall be guilty of the offense of failure to wear a seat safety belt and, upon conviction thereof, may be fined not more than \$15.00; but, the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. The court imposing such fine shall forward a record of the disposition of the case of failure to wear a seat safety belt to the Department of Driver Services.

(3) Each minor eight years of age or older who is an occupant of a passenger vehicle shall, while such passenger vehicle is being operated on a public road, street, or highway of this state, be restrained by a seat safety belt approved under Federal Motor Vehicle Safety Standard 208. In any case where a minor passenger eight years of age or older fails to comply with the requirements of this paragraph, the driver of the passenger vehicle shall be guilty of the offense of failure to secure a seat safety belt on a minor and, upon conviction thereof, may be fined not more than \$25.00. The court imposing such a fine shall forward a record of the court disposition of the case of failure to secure a seat safety belt on a minor to the Department of Driver Services.

(f) Probable cause for violation of this Code section shall be based solely upon a law enforcement officer's clear and unobstructed view of a person not restrained as required by this Code section. Noncompliance with the restraint requirements of this Code section shall not constitute probable cause for violation of any other Code section. (Code 1981, § 40-8-76.1, enacted by Ga. L. 1988, p. 31, § 1; Ga. L. 1990, p. 588, § 1; Ga. L. 1993, p. 516, § 1; Ga. L. 1994, p. 1005, § 1; Ga. L. 1996, p. 469, § 3; Ga. L. 1997, p. 143, § 40; Ga. L. 1998, p. 1579, § 1; Ga. L. 1999, p.

276, § 1; Ga. L. 2000, p. 862, § 1; Ga. L. 2000, p. 951, § 5B-4; Ga. L. 2004, p. 716, § 2; Ga. L. 2005, p. 334, § 19-4/HB 501; Ga. L. 2010, p. 817, § 1/SB 458; Ga. L. 2011, p. 253, § 2/SB 88.)

Cross references. — Safety belts required as equipment and safety restraints for children under age eight, § 40-8-76.

Editor's notes. — Ga. L. 1998, p. 1579, § 2, not codified by the General Assembly, provides that the 1998 amendment to this Code section shall be applicable to offenses committed on or after July 1, 1998.

Ga. L. 2004, p. 716, § 3, not codified by the General Assembly, provides: "It shall be the duty of the Governor's Office of Highway Safety to implement and coordinate a program to inform parents and other citizens of Georgia of the provisions of subsection (b) of Code Section 40-8-76 and paragraph (3) of subsection (e) of Code Section 40-8-76.1 as amended by this Act. Such program shall be carried out prior to January 1, 2005. The Governor's Office of Highway Safety shall solicit the cooperation and assistance of the Georgia State Patrol, Department of Motor Vehicle

Safety, Georgia Sheriffs Association, Georgia Association of Chiefs of Police, Incorporated, Peace Officers' Association of Georgia, Medical College of Georgia, Georgia Hospital Association, Georgia Association of Educators, Professional Association of Georgia Educators, Georgia Parent-Teacher Association, and other appropriate organizations in educating the citizens of the state and in implementing, coordinating, and carrying out such provisions."

Law reviews. — For article, "Federal Automotive Safety Standards and Georgia Products Liability Law: Conflict or Coexistence?," see 26 Ga. St. B.J. 107 (1990). For survey article on product liability law, see 59 Mercer L. Rev. 331 (2007) and 60 Mercer L. Rev. 303 (2008). For article, "The Seat-Belt Defense in Georgia," see 65 Mercer L. Rev. 19 (2013).

JUDICIAL DECISIONS

Section constitutional under state and federal provisions. — O.C.G.A. § 40-8-76.1 works no violation of federal due process or trial by jury by precluding evidence that the driver's failure to wear a seat belt was the proximate cause of the driver's injuries, nor does the statute work violations of state constitutional "right of access" to the courts (Ga. Const. 1983, Art. I, Sec. I, Para. XII) or equal protection of the laws (Ga. Const. 1983, Art. I, Sec. I, Para. II). *C.W. Matthews Contracting Co. v. Gover*, 263 Ga. 108, 428 S.E.2d 796 (1993).

Section does not deny equal protection. — Defendant who filed a motion to suppress evidence found in the defendant's automobile after being stopped for failing to fasten the defendant's seat belt could not show the absence of a rational relation between the classification drawn by O.C.G.A. § 40-8-76.1 and the public safety purpose thereof; thus, the trial court's denial of the defendant's motion based on an equal protection challenge to

that statute was not error. *Farley v. State*, 272 Ga. 432, 531 S.E.2d 100 (2000).

Seat belt law is a prospective statute only, applying to incidents on or after September 1, 1988. *Payne v. Joyner*, 197 Ga. App. 527, 399 S.E.2d 83 (1990).

Vehicular homicide. — Victim's failure to wear a seat belt can play no role in determining whether the defendant is guilty of vehicular homicide. *Whitener v. State*, 201 Ga. App. 309, 410 S.E.2d 796, cert. denied, 201 Ga. App. 905, 410 S.E.2d 796 (1991).

Probable cause for initial stop. — Even though O.C.G.A. § 40-8-76.1 does not require shoulder strap safety belts, the officer's observation that the defendant was not wearing the defendant's car's shoulder strap safety belt supported probable cause for stopping the defendant for violating subsection (b). *Davis v. State*, 232 Ga. App. 320, 501 S.E.2d 836 (1998).

When the officer testified that the officer had a clear and unobstructed view of the driver of the vehicle not wearing a seat

belt, this view was sufficient to establish probable cause for the stop, and once the vehicle was lawfully stopped, the officer was allowed to ask for the driver's consent to search the car. *State v. Millsap*, 243 Ga. App. 519, 528 S.E.2d 865 (2000).

O.C.G.A. § 40-8-76.1 was amended in order to provide that minors in pickup trucks were required to use seatbelts; as subsection (a) of O.C.G.A. § 40-8-76.1 specifically included pickup trucks that contained minors, the driver of a pickup truck could be stopped and ticketed for the failure to require a minor occupant to wear a seatbelt. *State v. McDuff*, 252 Ga. App. 183, 555 S.E.2d 213 (2001).

After the defendant's car was legitimately stopped during a police operation to stop vehicles wherein an occupant was not wearing a seatbelt, in violation of O.C.G.A. § 40-8-76.1(b), the court held that the traffic stop was justified and the search of the vehicle thereafter was based on the defendant's consent; accordingly, the denial of the defendant's motion to suppress evidence seized therein pursuant to O.C.G.A. § 17-5-30 was proper. *Taylor v. State*, 263 Ga. App. 420, 587 S.E.2d 791 (2003), cert. denied, 542 U.S. 941, 124 S. Ct. 2916, 159 L. Ed. 2d 820 (2004).

Police officer's observation that the first defendant, who was driving the vehicle, and the second defendant, who was a front-seat passenger, were violating the seatbelt law by not wearing their seatbelts was a sufficient ground for making a valid investigatory stop of their vehicle, which led to the later finding that the defendants were transporting cocaine. *Fernandez v. State*, 275 Ga. App. 151, 619 S.E.2d 821 (2005).

Consensual search upon traffic stop for seatbelt violation supported denial of a suppression motion as the search conducted pursuant to the defendant's consent was not a search based solely on the defendant's failure to wear a seatbelt; thus, the trial court did not err by ruling that law enforcement did not violate the Fourth Amendment during an officer's traffic stop for a violation of O.C.G.A. § 40-8-76.1. *Blitch v. State*, 281 Ga. 125, 636 S.E.2d 545 (2006).

Trial court properly denied the defen-

dant's motion to suppress evidence seized as a result of the stop of the defendant's vehicle; the stop of the defendant's vehicle for a seat belt violation under O.C.G.A. § 40-8-76.1(e)(3), (f) was permissible even if pretextual. *Soilberry v. State*, 282 Ga. App. 161, 637 S.E.2d 861 (2006), cert. denied, 2007 Ga. LEXIS 55 (Ga. 2007).

Defendant's Fourth Amendment rights were not violated because the defendant was properly stopped for driving without a seatbelt in violation of O.C.G.A. § 40-8-76.1, and the officer's search of the passenger area and recovery of the firearm beneath the driver's seat was valid because the arrest was lawful. *United States v. Jackson*, 249 Fed. Appx. 130 (11th Cir. 2007) (Unpublished).

In a trial for violations of 18 U.S.C. §§ 922(g)(1) and 924(e)(1), denial of a defendant's motion to suppress was not clear error because a police officer had probable cause to stop the defendant based on observing the defendant violate O.C.G.A. § 40-8-76.1 and during the stop developed probable cause to arrest the defendant for drug possession and search the defendant's vehicle. *United States v. Price*, No. 09-11270, 2009 U.S. App. LEXIS 25445 (11th Cir. Nov. 18, 2009).

Probable cause for stopping for seat belt violation. — Although the federal safety standard referred to in O.C.G.A. § 40-8-76.1(b) did not mandate the use of shoulder strap safety belts, a police officer had probable cause to stop the defendant on suspicion that the defendant was violating § 40-8-76.1(b) when the officer observed that the defendant was not wearing a shoulder strap safety belt while driving. *Moran v. State*, 257 Ga. App. 236, 570 S.E.2d 673 (2002).

Because sufficient evidence existed to support a finding that the arresting officer had a clear and unobstructed view of the defendant not wearing a seat belt as required by O.C.G.A. § 40-8-76.1(f), the officer's subsequent stop of the defendant's vehicle was supported by probable cause, making suppression of the evidence thereafter seized unwarranted; as a result, reconsideration of the court's ruling did not amount to an abuse of discretion. *Schramm v. State*, 286 Ga. App. 156, 648 S.E.2d 392 (2007).

Inability to see the employment of any restraining device, coupled with the common knowledge that seat belts were not standard equipment in the back of pickup trucks, provided a sufficient basis for a traffic stop to ensure compliance with O.C.G.A. § 40-8-76.1. *State v. McDuff*, 252 Ga. App. 183, 555 S.E.2d 213 (2001).

Exclusion of evidence. — For the exclusion of evidence provision of O.C.G.A. § 40-8-76.1 to apply, it is not required that the occupant was not wearing a seat belt and was charged with not wearing the seat belt. *Crosby v. Cooper Tire & Rubber Co.*, 240 Ga. App. 857, 524 S.E.2d 313 (1999).

Intent of subsection (d) of O.C.G.A. § 40-8-76.1 is to disallow admission of evidence of the failure to wear safety belts; thus, such evidence would not be allowed on the basis that it was relevant and admissible for the limited purposes of reduction of any damages, refutation of an element of plaintiffs' failure to warn claim, and impeachment. *Crosby v. Cooper Tire & Rubber Co.*, 240 Ga. App. 857, 524 S.E.2d 313 (1999).

O.C.G.A. § 40-8-76.1(d), which prohibits the use of evidence of the failure of an occupant of a motor vehicle to wear a seat safety belt as evidence of negligence or causation or to diminish any recovery for damages in any civil action, is not a statute that merely confers waivable rights on a party. Rather, O.C.G.A. § 40-8-76.1(d) provides the substantive law which courts must apply to any case involving an automobile. *Denton v. Daimlerchrysler Corp.*, 645 F. Supp. 2d 1215 (N.D. Ga. 2009).

Evidence from stop as probable cause for arrest. — When a stop for a seat belt violation was made, O.C.G.A. § 40-8-76.1 did not preclude an officer from conducting a reasonable inquiry and investigation to insure both the officer's safety and that of others, and evidence gathered as a result of the stop could be used as probable cause to arrest the driver for driving under the influence and other offenses. *Temples v. State*, 228 Ga. App. 228, 491 S.E.2d 444 (1997); *Holt v. Leiter*, 232 Ga. App. 376, 501 S.E.2d 879 (1998).

When any one of the traffic violations observed by a police officer would have

provided probable cause to effectuate a traffic stop, the trial court's denial of a motion to suppress evidence found during a subsequent search of the defendant's person, based upon an allegedly improper traffic stop, was not clearly erroneous. *Tukes v. State*, 236 Ga. App. 77, 511 S.E.2d 534 (1999).

Nothing in O.C.G.A. § 40-8-76.1(f) prevents an officer who stops a motorist for failing to wear a seat belt from conducting a reasonable investigation to ensure the officer's safety and if, during that investigation, the officer sees evidence of an unrelated crime, the officer may arrest the motorist for the unrelated crime notwithstanding the fact that the motorist originally was stopped for failing to wear a seat belt. *Edwards v. State*, 239 Ga. App. 44, 518 S.E.2d 426 (1999).

Arrests for additional offenses. — Even though the probable cause for the initial stop cannot itself be used as probable cause for arrests based on other violations, once a stop for a seat belt violation is made, O.C.G.A. § 40-8-76.1 does not prevent an officer from making an arrest for additional offenses based upon separate probable cause. *Davis v. State*, 232 Ga. App. 320, 501 S.E.2d 836 (1998).

Sport utility vehicles covered. — Even though a sport utility vehicle had design characteristics of an off-road vehicle, it was designed and intended primarily for use on public roads and, therefore, the General Assembly intended for seat safety belts to apply to it as a passenger vehicle in order to promote safety. *Crosby v. Cooper Tire & Rubber Co.*, 240 Ga. App. 857, 524 S.E.2d 313 (1999).

Erroneous jury instruction warranted new trial. — Because the trial court erroneously instructed the jury on the use of evidence a married couple's failure to wear their seatbelts as evidence of negligence or causation or to diminish any recovery, and such likely prejudiced the couple, a new trial was warranted. *King v. Davis*, 287 Ga. App. 715, 652 S.E.2d 585 (2007).

Cited in *Katz v. White*, 190 Ga. App. 458, 379 S.E.2d 186 (1989); *Scott v. Chapman*, 203 Ga. App. 58, 416 S.E.2d 111 (1992); *Heard v. State*, 291 Ga. App. 550, 662 S.E.2d 310 (2008); *Hughes v. State*, 293 Ga. App. 404, 667 S.E.2d 163 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Payments to Peace Officers' Annuity and Benefit Fund. — Amount required to be withheld and paid over to the Peace Officers' Annuity and Benefit Fund is not required to be withheld and paid

over in cases involving the failure to wear a seat safety belt under O.C.G.A. § 40-8-76.1(e). 2008 Op. Att'y Gen. No. 2008-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 541, 568, 569.

C.J.S. — 61 C.J.S., Motor Vehicles, §§ 1061, 1071, 1105, 1106, 1110, 1365.

40-8-77. Energy absorption system.

(a) As used in this Code section, the term "private passenger automobile" shall mean a four-wheel motor vehicle designed for carrying ten passengers or less, not for hire, for use on public roads and highways, and not designed for use as a dwelling or for camping, provided that the term "private passenger automobile" shall not include a multipurpose vehicle, which is, for the purposes of this Code section, defined as a motor vehicle, except a trailer, designed to carry ten passengers or less and constructed either on a truck chassis or with special features for occasional off-road operation.

(b) Every new private passenger automobile manufactured on and after August 1, 1973, which is sold or licensed in this state shall be sold subject to the manufacturer's warranty that it is equipped with an appropriate energy absorption system conforming to all federal motor vehicle safety standards applicable to such automobile on the date of manufacture. The warranty may be given by means of the federal safety standard certification label affixed to the automobile. (Ga. L. 1971, p. 373, §§ 1-3; Ga. L. 1974, p. 8, § 1; Ga. L. 1976, p. 1413, § 1; Code 1933, § 68E-408, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-77, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1992, p. 2785, § 28.)

OPINIONS OF THE ATTORNEY GENERAL

"Private passenger automobile" construed. — Any motor vehicle, meeting other requisites of Ga. L. 1971, p. 373 (see O.C.G.A. § 40-8-77), which is principally designed for use on public roads and highways and the carrying of passengers not for hire is a "private passenger automobile" within the coverage of these provisions, even though it might have subsidiary multi-purpose functions which did not fit within the definition. 1972 Op. Att'y

Gen. No. 72-50; 1973 Op. Att'y Gen. No. 73-92.

Criteria for determination. — Legislative criteria behind these provisions was one of principal-design intention, and in every case the department's application or nonapplication would depend upon a conclusion as to whether the manufacturer had designed the vehicle principally for carrying passengers or whether the passenger-carrying capacity of the vehicle

was strictly subsidiary to other functions not within the definition. 1973 Op. Att'y Gen. No. 73-92.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 1, 183 et seq., 189, 190.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 1 et seq., 479, 480.

ALR. — Express or implied warranty of quality, condition, or fitness of automobile or truck sold by retail dealer, 43 ALR 648.

Express warranty as excluding implied warranty of fitness, 164 ALR 1321.

40-8-78. Safety glazing.

(a) No person shall sell any motor vehicle manufactured after January 1, 1954, nor shall any such motor vehicle be registered unless such vehicle is equipped with safety glazing materials of a type approved by the commissioner of public safety wherever glazing materials are used in doors, windows, and windshields. The provisions of this Code section shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing materials shall apply to all glazing materials used in doors, windows, and windshields in the drivers' compartments of such vehicles.

(b) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(c) Any person engaged in the business of replacing windshields or any side or rear windows of motor vehicles, which are subject to the provisions of this Code section, shall not replace such windshields or side or rear windows with any glazing materials other than safety glazing materials approved by the commissioner.

(d) The commissioner of public safety shall compile and publish in print or electronically a list of types of glazing materials by name approved by him or her as meeting the requirements of this Code section and the commissioner shall not register any motor vehicle which is subject to the provisions of this Code section unless it is equipped with an approved type of safety glazing materials, and he or she shall thereafter suspend the registration of any motor vehicle so subject to this Code section which he or she finds is not so equipped until it is made to conform to the requirements of this Code section.

(e) This Code section shall not be construed to require that side or rear windows of motor vehicles which were replaced or installed prior to January 1, 1954, must be replaced with safety glazing materials as

provided in this Code section. (Code 1933, § 68E-409, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-78, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 5B-5; Ga. L. 2005, p. 334, § 19-5/HB 501; Ga. L. 2010, p. 838, § 10/SB 388.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “truck tractors” was substituted for “truck-tractors” in the second sentence of subsection (a).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 189, 190. **C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 43 et seq., 474 et seq.

40-8-79. Unlawfully riding in bed of pickup truck; penalty.

It shall be unlawful for any person under the age of 18 to ride as a passenger in the uncovered bed of a pickup truck on any interstate highway in this state. The driver of any vehicle in violation of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-8-79, enacted by Ga. L. 1990, p. 588, § 2.)

JUDICIAL DECISIONS

Cited in In re B.C.G., 235 Ga. App. 1, 508 S.E.2d 239 (1998); Steele v. State, 275 Ga. App. 651, 621 S.E.2d 606 (2005).

PART 5

EQUIPMENT OF LAW ENFORCEMENT AND EMERGENCY VEHICLES

Cross references. — Operation of authorized emergency vehicles, § 40-6-6.

40-8-90. Restrictions on use of blue lights on vehicles.

(a)(1) Except as provided in this paragraph and subsection (b) of this Code section, it shall be unlawful for any person, firm, or corporation to operate any motor vehicle equipped with or containing a device capable of producing any blue lights, whether flashing, blinking, revolving, or stationary, except:

(A) Motor vehicles owned or leased by any federal, state, or local law enforcement agency;

(B) Motor vehicles with a permit granted by a state agency to bear such lights; or

(C) Antique, hobby, and special interest vehicles, as defined in paragraph (8) of subsection (l) of Code Section 40-2-86.1, which

may display a blue light or lights of up to one inch in diameter as part of any such vehicle's rear stop lamps, rear turning indicator, rear hazard lamps, and rear reflectors.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(b) The prohibition contained in subsection (a) of this Code section shall not apply to any elected sheriff who, pursuant to an agreement between the sheriff and the county governing authority, is using his or her personal motor vehicle in a law enforcement activity, provided such vehicle is marked as provided in Code Section 40-8-91.

(c) It shall be unlawful for any person to use any motor vehicle equipped with flashing, blinking, revolving, or stationary blue lights in the commission of a felony, and, upon conviction of a violation of this subsection, the punishment shall be a fine of not less than \$1,000.00 or imprisonment of not less than one year, or both. (Ga. L. 1966, p. 208, § 1; Ga. L. 1971, p. 781, § 1; Ga. L. 1972, p. 1092, § 1; Ga. L. 1977, p. 1012, § 1; Ga. L. 1984, p. 1193, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1992, p. 1287, § 1; Ga. L. 2005, p. 1026, § 1/SB 178; Ga. L. 2010, p. 9, § 1-82/HB 1055.)

Editor's notes. — Ga. L. 2005, p. 1026, § 2/SB 178, not codified by the General Assembly, provides that the 2005 amend-

ment applies to offenses occurring on or after July 1, 2005.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 40-8-90 is an offense for which those charged with a violation

are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq.

40-8-91. Marking and equipment of law enforcement vehicles; motorist allowed to continue to safe location before stopping for law enforcement officer vehicles.

(a) Except as provided in subsection (b) of this Code section, any motor vehicle which is used on official business by any person authorized to make arrests for traffic violations in this state, or any municipality or county thereof, shall be distinctly marked on each side and the back with the name of the agency responsible therefor, in letters not less than four inches in height.

(b) Any motor vehicle, except as hereinafter provided in this subsection, used by any employee of the Georgia State Patrol for the purpose

of enforcing the traffic laws of this state shall be distinctly painted, marked, and equipped in such manner as shall be prescribed by the commissioner of public safety pursuant to this Code section. The commissioner in prescribing the manner in which such vehicles shall be painted, marked, or equipped shall:

(1) Require that all such motor vehicles be painted in a two-toned uniform color. The hood, top, and the top area not to exceed 12 inches below the bottom of the window opening thereof shall be a light gray color and the remaining portion of said motor vehicle shall be painted a dark blue color;

(2) Require that any such motor vehicle be equipped with at least one lamp which when lighted shall display a flashing or revolving colored light visible under normal atmospheric conditions for a distance of 500 feet from the front and rear of such vehicle; and

(3) Require that any such motor vehicle shall be distinctly marked on each side and the back thereof with the wording "State Patrol" in letters not less than six inches in height of a contrasting color from the background color of the motor vehicle.

(c) It shall be unlawful for any person, except persons lawfully entitled to own vehicles for law enforcement purposes, to paint, mark, or equip any motor vehicle in the same manner prescribed by this Code section or by the commissioner for law enforcement vehicles.

(d) When a law enforcement vehicle is disposed of, or is not in use for law enforcement, the lettering and colored lights must be removed. Any person using such vehicle for personal use prior to removing colored lights and lettering shall be guilty of a misdemeanor.

(e) Whenever a motorist driving on the roadways of this state is directed to stop by a law enforcement officer in a law enforcement vehicle marked as required under this Code section, the motorist may continue to drive until a reasonably safe location for stopping is reached. Such motorist shall indicate to the officer his or her intent to proceed to a safe location by displaying the vehicle's flashing lights or turn signal. In proceeding to a safe location, the motorist shall observe the posted maximum speed limit.

(f) An otherwise lawful arrest shall not be invalidated or in any manner affected by failure to comply with this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A; Ga. L. 1966, p. 166, § 1; Ga. L. 1976, p. 208, § 1; Ga. L. 1986, p. 802, §§ 1-3; Ga. L. 1987, p. 3, § 405; Ga. L. 2006, p. 231, § 3/SB 64; Ga. L. 2006, p. 255, § 1/SB 454; Ga. L. 2010, p. 105, § 1-1/HB 981; Ga. L. 2014, p. 866, § 40/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, deleted the undesignated paragraph following subsec-

tion (b), which read: "Notwithstanding the above provisions, it shall be permissible for the commissioner to allow not more than five motor vehicles per State Patrol post to be employed in traffic law enforcement which are painted any solid color designated by the commissioner and marked with 'State Patrol' in six inch high letters of a contrasting color."

Cross references. — Provision that marked vehicles normally used for transporting criminals or those accused of crime shall not be used for transporting mental patients, persons undergoing habilitation for mental retardation, alcoholics, or others, §§ 37-3-101, 37-4-61, 37-7-101.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "in" was substituted for "is" preceding "use for law enforcement" near the beginning of subsection (d).

Editor's notes. — Ga. L. 2010, p. 105, § 3-1/HB 981, not codified by the General Assembly, provided for the repeal of the amendment to subsection (b) of this Code section by that Act, effective June 30, 2013.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Applicability of section limited. — Ga. L. 1966, p. 166, § 1 (see O.C.G.A. § 40-8-91) is applicable only in cases where vehicles are used in patrolling traffic or in making arrests for traffic violations. *Clayton v. Taylor*, 223 Ga. 346, 155 S.E.2d 387 (1967).

Construction with other law. — County sheriff had the independent authority to repaint and remark county-owned sheriff's vehicles assigned to the sheriff's exclusive use, but lacked the authority to modify portions of a county-owned building in which the sheriff's office and jail were housed, as the facility was shared with the superior, state, and magistrate courts of Clayton County as well as the clerks of those courts, the solicitor general, and the district attorney, and hence, not under the sheriff's exclusive use; as a result, subject to compliance with O.C.G.A. § 40-8-91, summary judgment in favor of the county as to the extent of the sheriff's authority was reversed as to the former, but affirmed as to the latter. *Hill v. Clayton County Bd. of Comm'rs*, 283 Ga. App. 15, 640 S.E.2d 638 (2006).

No marking of police cars as escort vehicles. — In a suit by a driver who ran into a house while the house was being moved and escorted by police vehicles, there was no merit to the driver's argument that the police vehicles had to be marked as escort vehicles; that would be

contrary to O.C.G.A. §§ 40-6-6 and 40-8-91, which mandate proper markings for police cars and do not allow those vehicles to have amber lights. *Hersh v. Griffith*, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

Public policy to identify arresting vehicles. — Ga. L. 1966, p. 166, § 1 (see O.C.G.A. § 40-8-91) requires that motor vehicles used by the police on official business shall be marked on the back and on each side. This is an expression of the public policy of the state that vehicles used for the purpose of traffic arrests shall be identified. *Clayton v. Taylor*, 223 Ga. 346, 155 S.E.2d 387 (1967).

Civil action when failure to mark vehicle is proximate cause of injury. — Vehicles used for the purpose of traffic arrests shall be identified, and when the failure to make such identification is the proximate cause of injury, a civil action will lie. *Ross v. City of Lilburn*, 114 Ga. App. 428, 151 S.E.2d 490 (1966).

No civil action if no causal connection exists. — In an action for damages caused by a car collision, the court did not err in refusing to charge that the failure of the sheriff to have the sheriff's automobile distinctly marked on each side and the back, as provided by Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A, was negligence per se, since the defendant, who caused the collision in an attempt to outrun the sheriff's car, contended that the

defendant did not know who was pursuing the defendant because such car was unmarked since there was no causal connection between the sheriff's failure to have the sheriff's automobile properly marked and the collision. *Fountain v. Smith*, 103 Ga. App. 192, 118 S.E.2d 852 (1961).

Arrests from unmarked vehicles. — O.C.G.A. § 40-8-91 does not invalidate traffic arrests made in unmarked vehicles. *State v. Carter*, 215 Ga. App. 647, 451 S.E.2d 541 (1994).

O.C.G.A. § 40-8-91 did not require exclusion of the testimony of an officer who made an arrest for reckless driving in an unmarked vehicle. *Gilbert v. State*, 222 Ga. App. 787, 476 S.E.2d 39 (1996).

Flight from unmarked vehicle. — Because the circumstances of the defendant's low-speed flight from an uniformed detective, who was driving an unmarked vehicle, were insufficient to present law enforcement with evidence of a particular crime, the defendant could not be charged

with the crime of attempting to elude an officer, and police lacked probable cause sufficient to warrant an arrest for the offense; thus, the search incident to the arrest was invalid, warranting suppression of the evidence seized. *Stephens v. State*, 278 Ga. App. 694, 629 S.E.2d 565 (2006).

Stop by unmarked vehicle. — O.C.G.A. § 40-8-91 did not require exclusion of the evidence obtained after an officer, who had been following the defendant in an unmarked police car based on a tip, pulled the defendant over after the defendant crossed the center line. *Sapp v. State*, 297 Ga. App. 218, 676 S.E.2d 867 (2009).

Cited in *Poole v. City of Louisville*, 107 Ga. App. 305, 130 S.E.2d 157 (1963); *Ward v. State*, 126 Ga. App. 214, 190 S.E.2d 444 (1972); *Barron v. State*, 157 Ga. App. 186, 276 S.E.2d 868 (1981); *Thomas v. State*, 261 Ga. App. 493, 583 S.E.2d 207 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Marking required of sheriff-owned automobile used for law enforcement. — If the sheriff of a county is required to furnish the sheriff's own automobile for law enforcement purposes, even though the automobile is owned by the sheriff and the county does not furnish the sheriff with a motor vehicle for such purposes, such motor vehicle must be marked in accordance with Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A (see O.C.G.A. § 40-8-91). 1954-56 Op. Att'y Gen. p. 897.

If a motor vehicle is owned by a sheriff as the sheriff's own individual motor vehicle but is used by the sheriff on official business to make arrests for traffic violations, such motor vehicle should be marked, under Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A (see O.C.G.A. § 40-8-91). 1957 Op. Att'y Gen. p. 332.

Use of marked automobile by constable. — Constable may use a marked

automobile that is equipped with a colored light mounted on the cab and a siren, if the constable can do so without holding oneself out to the public as a county police officer. 1969 Op. Att'y Gen. No. 69-214.

Arrest made using unmarked vehicle valid. — Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A (see O.C.G.A. § 40-8-91) has no effect on the legality of any arrest which is made, and an arrest made by a sheriff or a deputy sheriff using an unmarked motor vehicle would be legal, if otherwise so. 1957 Op. Att'y Gen. p. 332.

Mandamus to enforce compliance with section. — Petition for writ of mandamus brought by a taxpayer or member of the motoring public is the proper method to enforce compliance with Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A (see O.C.G.A. § 40-8-91), requiring the marking of official vehicles. 1965-66 Op. Att'y Gen. No. 65-49.

40-8-91.1. Marking and equipment of all-terrain vehicles used as law enforcement vehicles.

(a) As used in this Code section, the term “all-terrain vehicle” means any motorized vehicle designed for off-road use which is equipped with four or more nonhighway tires and which is 50 inches or less in width.

(b) Every all-terrain vehicle must comply with the equipment and marking specifications set forth in this article before such vehicle can be used by law enforcement agencies and officers upon the public roads of this state. All provisions of law relating to safe operation of law enforcement or emergency vehicles shall be applied to the operation of such all-terrain vehicles.

(c) Any all-terrain vehicle which is operated by law enforcement agencies and officers upon the public roads of this state shall be registered and licensed in accordance with the provisions of Code Section 40-2-37. (Code 1981, § 40-8-91.1, enacted by Ga. L. 2006, p. 675, § 1/HB 1216; Ga. L. 2012, p. 726, § 5/HB 795.)

The 2012 amendment, effective May 1, 2012, substituted the present provisions of subsection (a) for the former provisions, which read: “As used in this Code section, the term ‘all-terrain vehicle’ means any motorized vehicle designed for

off-road use which is equipped with at least a 500 cubic centimeter engine, four or more low pressure tires, a seat to be straddled by the operator, and handlebars for steering control.”

40-8-92. Designation of emergency vehicles; flashing or revolving lights; permits; fee; prohibition against use of flashing or revolving green lights by private persons on public property.

(a) All emergency vehicles shall be designated as such by the commissioner of public safety. The commissioner shall so designate each vehicle by issuing to such vehicle a permit to operate flashing or revolving emergency lights of the appropriate color. Such permit shall be valid for one year from the date of issuance; provided, however, that permits for vehicles belonging to federal, state, county, or municipal governmental agencies shall be valid for five years from the date of issuance. Any and all officially marked law enforcement vehicles as specified in Code Section 40-8-91 shall not be required to have a permit for the use of a blue light. Any and all fire department vehicles which are distinctly marked on each side shall not be required to have a permit for the use of a red light. Any and all ambulances, as defined in Code Section 31-11-2, licensed by this state shall not be required to have a permit for the use of a red light.

(b) The commissioner shall authorize the use of red or amber flashing or revolving lights only when the person or governmental

agency shall demonstrate to the commissioner a proven need for equipping a vehicle with emergency lights. The fee for such lights shall be \$2.00, provided that no federal, state, county, or municipal governmental agency or an ambulance provider, as defined in Code Section 31-11-2, shall be required to pay such fee.

(c) Nothing contained in this Code section shall prohibit the commissioner from issuing a single special use permit to cover more than one vehicle, provided each vehicle covered under such special use permit shall pay the fee specified in subsection (b) of this Code section.

(d) Except as provided in this subsection, it shall be unlawful for any person, firm, or corporation to operate any motor vehicle or to park any motor vehicle on public property with flashing or revolving green lights. This subsection shall not apply to any motor vehicle being used by any law enforcement agency, fire department, emergency management agency, or other governmental entity to designate the location of the command post for such agency, department, or entity at the site of an emergency. (Ga. L. 1971, p. 781, § 2; Ga. L. 1972, p. 1092, §§ 3, 4; Ga. L. 1977, p. 1012, § 4; Ga. L. 1983, p. 447, § 1; Ga. L. 1988, p. 582, § 1; Ga. L. 1991, p. 1145, § 3; Ga. L. 2000, p. 951, § 5B-6; Ga. L. 2005, p. 334, § 19-6/HB 501; Ga. L. 2010, p. 95, § 1/SB 410.)

Administrative rules and regulations. — Flashing and Revolving Lights on Motor Vehicles, Official Compilation of

the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-11.

JUDICIAL DECISIONS

Cited in *Palmer v. State*, 250 Ga. 219, 297 S.E.2d 22 (1982); *Pryor v. Phillips*, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Use of flashing lights by university security departments. — Flashing or revolving blue lights can be operated on motor vehicles belonging to campus police and security departments of the University System of Georgia; however, these vehicles must belong to the Board of Regents, and this applies only to the University System, and not to other schools, colleges, or campuses which are not under the jurisdiction of the Board of Regents. 1973 Op. Att'y Gen. No. 73-23.

Prerequisites for amber light permits. — Board of Public Safety may establish by rule and regulation the prerequisites for the issuance of amber light permits and amber lights may be used

only in accordance with those rules and regulations. 1974 Op. Att'y Gen. No. 74-112.

Prohibition on use of red emergency lights imposable. — Current Georgia law does not expressly forbid the use of red emergency lights on law enforcement vehicles; but the Board of Public Safety may, by the Board's rules and regulations, impose a prohibition on the use of red emergency lights on law enforcement vehicles. 1983 Op. Att'y Gen. No. 83-32.

Volunteer firemen exempt from fee. — Volunteer fireman who, along with application for permit to operate flashing or revolving emergency lights, submits suffi-

cient proof that the fireman's application is occasioned solely by the fireman's duty as a volunteer fireman should enjoy the same exemption from \$2.00 fee provided

for in O.C.G.A. § 40-8-92 that is enjoyed by the fireman's respective governmental unit. 1982 Op. Att'y Gen. No. 82-15.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31, 36 et seq., 56. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 814 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

40-8-93. Flashing parking or brake lights or directional signals not prohibited.

Nothing contained in Code Sections 40-8-90 and 40-8-92 shall be deemed to apply to nor construed to prohibit blinking or flashing parking or brake lights or directional signals on any motor vehicle. (Ga. L. 1972, p. 1092, § 6; Ga. L. 1977, p. 1012, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 800, 801.

40-8-94. Sirens, whistles, or bells.

Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which latter event the driver of such vehicle shall sound the siren when necessary to warn pedestrians and other drivers of the approach thereof. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 116.)

JUDICIAL DECISIONS

Unlawful siren use not negligence per se. — In a negligence action arising out of a motor vehicle collision, the defendant's unlawful use of a siren was not negligence per se. There had to be evi-

dence of a causal relationship between the defendant's failure to obtain a permit for the siren and the collision. *Pryor v. Phillips*, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

40-8-95. Rules and regulations.

The commissioner of public safety shall implement any and all provisions of Code Sections 40-8-90, 40-8-92, and 40-8-93 by the promulgation of necessary rules and regulations. (Ga. L. 1977, p. 1012, § 6; Ga. L. 2000, p. 951, § 5B-7; Ga. L. 2005, p. 334, § 19-7/HB 501.)

OPINIONS OF THE ATTORNEY GENERAL

Prohibition on use of red emergency lights imposable. — Current Georgia law does not expressly forbid the use of red emergency lights on law enforcement vehicles; but the Board of Pub-

lic Safety may, by the Board's rules and regulations, impose a prohibition on the use of red emergency lights on law enforcement vehicles. 1983 Op. Att'y Gen. No. 83-32.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 15, 16, 20.

40-8-96. Violation of Code Sections 40-8-90 and 40-8-92.

Any person violating Code Sections 40-8-90 and 40-8-92 shall be guilty of a misdemeanor. (Ga. L. 1972, p. 1092, § 5; Ga. L. 1977, p. 1012, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

regulations as to automobile lights, 11 ALR 1226; 78 ALR 815.

ALR. — Validity and construction of

PART 6

EQUIPMENT OF SCHOOL BUSES

Cross references. — Operation of school buses, § 40-6-160 et seq.

40-8-110. Identification and color.

(a) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "SCHOOL BUS" in letters not less than eight inches in height.

(b) On and after January 1, 1971, every new school bus purchased for the transportation of school children shall be painted National School Bus Chrome Yellow. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 89; Ga. L. 1970, p. 586, § 2.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1933, § 68-311 are included in the annotations for this Code section.

Failure to mark bus is negligence per se. — Operation of a bus in transport-

ing school children without the bus being marked "school bus" is negligence per se. *Dishinger v. Suburban Coach Co.*, 84 Ga. App. 498, 66 S.E.2d 242 (1951) (decided under former Code 1933, § 68-311).

40-8-111. Equipment generally.

(a) Each school bus used for the transportation of school children in the State of Georgia shall be in compliance with the State Board of Education bus specifications for the model year of such school bus.

(b) Each public school system shall be required to maintain each of its school buses in good working condition, including all safety equipment required in accordance with the specifications established pursuant to subsection (a) of this Code section.

(c) Nothing in subsection (a) of this Code section shall apply to motor vehicles operated by a local transit system which transport school children to and from school on regular or scheduled routes of a transit vehicle with regular fare-paying passengers. (Ga. L. 1970, p. 586, § 2; Ga. L. 1978, p. 1367, §§ 1, 2; Ga. L. 1982, p. 3, § 40; Ga. L. 1986, p. 501, § 1; Ga. L. 1992, p. 2963, § 1; Ga. L. 2004, p. 621, § 8.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

Editor's notes. — Ga. L. 1992, p. 2963, § 2, not codified by the General Assembly, provides: "The requirements of this Act shall apply only to new school buses manufactured on or after January 1, 1993."

Ga. L. 2004, p. 621, § 5, not codified by the General Assembly, provides: "This part [consisting of §§ 5-8 of the Act] shall be known and may be cited as 'Aleana's Law.'"

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1933, § 66-311 are included in the annotations for this Code section.

Inapplicability of section to common carrier. — Predecessor law was intended to apply to busses primarily and exclusively used for transportation of school children to and from school, and not to a bus operating as a common carrier for hire, traveling on a schedule along an

established route, and transporting school children only as an incident of the carrier's duty to transport any member of the public who wishes to ride and pays the rider's fare. *Hanks v. Georgia Power Co.*, 86 Ga. App. 654, 72 S.E.2d 198 (1952) (decided under former Code 1933, § 66-311).

Cited in *Metropolitan Atlanta Rapid Transit Auth. v. Tuck*, 163 Ga. App. 132, 292 S.E.2d 878 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Standards apply to city transit buses in which children ride. — Safety and equipment standards set up by Ga. L. 1970, p. 586, § 2 (see O.C.G.A.

§ 40-8-111) apply to the buses of a city transit system in which school children ride. 1972 Op. Att'y Gen. No. U72-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 87, 280. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 491, 956.

C.J.S. — 60 C.J.S., Motor Vehicles, § 189. 78 C.J.S., Schools and School Districts, § 457.

40-8-112. Compliance with State Board Bus Specifications.

Every school bus used to transport children to and from school shall comply with the State Board Bus Specifications prescribed by the State Board of Education. (Ga. L. 1970, p. 586, § 2.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

OPINIONS OF THE ATTORNEY GENERAL

Waiver of equipment standards. — There is no authority which would allow a waiver of the equipment standards enu-

merated in Ga. L. 1970, p. 586, § 2 (see O.C.G.A. § 40-8-111). 1977 Op. Att'y Gen. No. 77-43.

40-8-113. Standards applicable regardless of size or capacity.

The identification and equipment standards provided in this part shall apply to all school buses as defined in paragraph (55) of Code Section 40-1-1 regardless of size or capacity. (Ga. L. 1974, p. 633, § 1; Ga. L. 1992, p. 6, § 40.)

40-8-114. Operation of school buses by churches, private schools, and local transit systems; transportation of school children on buses owned or operated by public transit systems.

(a) Notwithstanding any other provision of this title to the contrary, churches, private schools, or local transit systems may operate school buses meeting the equipment, color, and marking requirements of Code Sections 40-8-110 through 40-8-112 and 40-8-115 and drivers of such vehicles shall be required to stop as set forth in Code Section 40-6-163. For purposes of this subsection, only churches and private schools are authorized to comply with Code Sections 40-8-110 through 40-8-112,

and only local transit systems are authorized to comply with Code Section 40-8-115.

(b) Notwithstanding any other provision of this title to the contrary, the requirements relating to buses used for the transportation of school children, which requirements are contained in the following Code sections:

- (1) Code Section 40-6-160, relating to speed limits;
 - (2) Code Section 40-6-161, relating to headlamps;
 - (3) Code Section 40-6-162, relating to use of visual signals;
 - (4) Code Section 40-6-163, relating to meeting or passing school buses;
 - (5) Code Section 40-8-110, relating to identification and color;
 - (6) Code Section 40-8-111, relating to equipment generally;
 - (7) Code Section 40-8-112, relating to compliance with certain State Board of Education specifications;
 - (8) Code Section 40-8-115, relating to identification and equipment of certain school buses; and
 - (9) Code Section 40-8-220, relating to inspection of school buses,
- shall not apply to any bus which is owned or operated by a publicly owned and operated transit system and which either transports school children to and from school on regular or scheduled routes with regular fare-paying passengers or which engages in tripper service. (Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 633, § 2.)

40-8-115. Identification and equipment of school buses for special school route service.

This part shall not prohibit the use of a school bus as defined in paragraph (55) of Code Section 40-1-1 for special school route service, provided it shall meet the following identification and equipment requirements:

- (1) The bus need not be painted yellow or black;
- (2) The bus shall be equipped with four hooded or recessed red flasher lights, or four red flasher lights and four amber flasher lights mounted on the same horizontal centerline as the red lights and nearer the centerline. Such amber lights shall be at least two and one-half times brighter than the red lights. The system shall be wired so that the amber signal lights are activated only by manual or foot

operation and if activated are automatically deactivated and the red signal lights activated when the bus entrance door is opened; and

(3) While transporting children to or from school, the bus shall be equipped with the following temporary signs, located conspicuously on the front and back of such vehicle:

(A) The sign on the front shall have the words "SCHOOL BUS" printed in black letters not less than six inches high, on a background of National School Bus Glossy Yellow; and

(B) The sign on the rear shall be at least ten square feet in size and shall be painted National School Bus Glossy Yellow and have the words "SCHOOL BUS" printed in black letters not less than eight inches high. (Ga. L. 1974, p. 633, § 1; Ga. L. 1992, p. 6, § 40.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

JUDICIAL DECISIONS

Use of local transit authority bus for special school route service necessitates compliance with school bus identification and equipment requirements.

Metropolitan Atlanta Rapid Transit Auth. v. Tuck, 163 Ga. App. 132, 292 S.E.2d 878 (1982).

40-8-116. Unlawful acts.

It shall be unlawful to operate:

(1) Any vehicle displaying the words "SCHOOL BUS" unless it meets the color, identification, and equipment requirements set forth in Code Section 40-8-113 or 40-8-115;

(2) A vehicle without the words "SCHOOL BUS" but which is of a color and exhibits some equipment or identification which reasonably could cause a motorist to confuse it with a properly colored, identified, and equipped school bus;

(3) Any school bus for any purpose other than the transportation of school children to or from school or school activities without concealing or covering all markings thereon indicating "SCHOOL BUS"; or

(4) A vehicle which has been permanently converted from the purpose of transporting students to or from school or school activities without first having painted such vehicle some color other than the yellow required in subsection (b) of Code Section 40-8-110 and without having removed the stop arms, if any, and any other equipment required by Code Section 40-8-111. (Ga. L. 1974, p. 633, § 1.)

JUDICIAL DECISIONS

Cited in Metropolitan Atlanta Rapid Transit Auth. v. Tuck, 163 Ga. App. 132, 292 S.E.2d 878 (1982).

ARTICLE 2

CONTROL OF VEHICLE EMISSIONS

PART 1

EMISSION CONTROL DEVICES GENERALLY

40-8-130. Unlawful to operate vehicle without serviceable emission control device; penalty; exceptions.

(a) It shall be unlawful for the owner of any motor vehicle to operate or permit the operation of such vehicle on which any device controlling or abating atmospheric emissions which is placed on a motor vehicle by the manufacturer pursuant to regulations promulgated by the United States secretary of health and human services in accordance with the provisions of Title II, the National Emissions Standards Act, of the Air Quality Act of 1967, Public Law 90-148 has been rendered unserviceable by removal, alteration, or other interference with its operation.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor.

(c) Subsection (a) of this Code section shall not apply to any person repairing any such device described in that subsection or to the removal of any such device by any person for the purpose of repairing or replacing such device.

(d) Subsection (a) of this Code section shall not apply to any person removing any such device for the purpose of converting any motor vehicle to operate on natural or liquefied petroleum gas or make any other modifications which would reduce atmospheric emissions. (Ga. L. 1971, p. 188, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 1997, p. 143, § 40.)

U.S. Code. — The federal Air Quality Act of 1967, which amended the federal Clean Air Act (now codified at 42 U.S.C. § 7401 et seq.), was amended by the federal Clean Air Act Amendments of 1977 (P.L. 95-95; 91 Stat. 685). Title II of the Air Quality Act of 1967, the federal National Emissions Standards Act, is codified at 42 U.S.C. § 7521 et seq.

OPINIONS OF THE ATTORNEY GENERAL

No exemption for dual fuel capacity vehicles under O.C.G.A. Art. 2, Ch. 8, T. 40 is provided under O.C.G.A. § 40-8-130. 1981 Op. Att’y Gen. No. 81-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 201. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 52.

40-8-131. Inspection without warrant authorized.

Any vehicle suspected of being operated in violation of this part may be the subject of an inspection conducted by an officer of the Georgia State Patrol who has reason to believe such violation is occurring, without the necessity of obtaining a warrant to permit such inspection. (Ga. L. 1971, p. 188, § 1.)

40-8-132. Annual inspection.

Repealed by Ga. L. 1982, p. 165, §§ 1, 6, effective November 1, 1982.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 989, § 1.

PART 2

ESTABLISHMENT OF EMISSION STANDARDS; INSPECTION OF MOTOR VEHICLES FOR COMPLIANCE WITH STANDARDS

40-8-150 through 40-8-163.

Reserved. Repealed by Ga. L. 1992, p. 918, § 1, effective July 1, 1992.

Editor's notes. — Ga. L. 1992, p. 918, § 1, effective July 1, 1992, repealed Part 2 of Article 2 of Chapter 8 of this title, which consisted of Code Sections 40-8-150 through 40-8-159, 40-8-159.1, and Code Sections 40-8-160 through 40-8-163 and

was based on Ga. L. 1979, p. 1213, §§ 1, 2; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1985, p. 149, § 40. For present provisions as to automobile emissions standards, see Code Section 12-9-40 et seq.

PART 3

VISIBLE EMISSIONS

40-8-180. Short title.

This part shall be known and may be cited as the "Vehicular Visible Emission Control Act." (Ga. L. 1971, p. 186, § 1; Ga. L. 1994, p. 97, § 40.)

40-8-181. Visible emissions from vehicles on public roadways prohibited; exceptions.

(a) It shall be unlawful for any person to operate on a public roadway of this state a diesel powered vehicle which discharges into the atmosphere visible emissions resulting in a decrease of light transmission beyond 30 percent, whether emitted from the crankcase, the exhaust system, or from any part of the power system; provided, however, that the light obscuring limitations prescribed in this subsection may be exceeded during periods of acceleration and deceleration not to exceed ten continuous seconds or 1,000 feet.

(b) It shall be unlawful for any person to operate on a public roadway of this state a gasoline powered vehicle which discharges into the atmosphere visible emissions resulting in a decrease of light transmission, whether emitted from the crankcase, the exhaust system, or from any part of the power system; provided, however, that the light obscuring limitation prescribed in this subsection may be exceeded for periods not to exceed ten continuous seconds or 1,000 feet.

(c) Subsections (a) and (b) of this Code section shall not apply to the normal discharge of condensed water vapor. (Ga. L. 1971, p. 186, § 2.)

JUDICIAL DECISIONS

Stop of vehicle for violation was not justified when there was no proof that the trooper was equipped with a light transmission gauge prescribed by O.C.G.A. § 40-8-182. *Raulerson v. State*, 223 Ga. App. 556, 479 S.E.2d 386 (1996).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 99, 130, 137.

40-8-182. Enforcement of part; traffic violation citations.

(a) This part shall be enforced by the duly authorized traffic control agency of this state or of any political subdivision thereof. The Air Quality Control Agency of this state shall produce and furnish to such traffic control agency appropriate light transmission gauges to be used in the enforcement of this part.

(b) A traffic violation citation shall be issued to the operator of a vehicle in violation of any provision of this part on and after January 1, 1973. (Ga. L. 1971, p. 186, § 2.)

40-8-183. Penalty.

Any person who violates any provision of this part shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$10.00 nor more than \$25.00. (Ga. L. 1971, p. 186, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 296, 297, 299. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq. **C.J.S.** — 39A C.J.S., Health and Environment, §§ 213, 239, 248.

40-8-184. Municipal and county regulation prohibited.

No subdivision of this state shall enact any ordinance or issue any rules and regulations pertaining to the discharging into the atmosphere of visible emissions from diesel powered vehicles or gasoline powered vehicles. (Ga. L. 1971, p. 186, § 4.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 99, 130, 137.

40-8-185. Part not applicable to certain vehicles.

This part shall not apply to off-highway farm, forest, and construction equipment being moved from one work location to another. (Ga. L. 1971, p. 186, § 5.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 99, 130, 137.

ARTICLE 3**INSPECTIONS BY OFFICERS OF DEPARTMENT OF PUBLIC SAFETY****40-8-200. Inspection of vehicles by officers of the Department of Public Safety; issuance of certificate of inspection; procedure.**

(a) The commissioner of public safety and members of the Department of Public Safety, and such other officers and employees of the department as the commissioner may designate, may at any time, upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law or that its equipment is not in proper adjustment or

repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such tests with reference thereto as may be appropriate.

(b) In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making such an inspection shall issue to the driver an official certificate of inspection and approval of such vehicle specifying those parts or equipment so inspected and approved.

(c) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy to the department. Such notice shall require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment specifying the particulars with reference thereto and shall require that a certificate of inspection and approval be obtained within 30 days. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 124; Ga. L. 1960, p. 950, § 1; Ga. L. 1963, p. 333, § 1; Ga. L. 1965, p. 188, § 2.)

Cross references. — Authority of law enforcement officers to stop vehicles for determination of compliance with vehicle size, weight, and other laws, § 32-6-30.

OPINIONS OF THE ATTORNEY GENERAL

Removal of vehicles from roadways by officers. — Officer may not remove vehicle from roadway simply because the officer determines the vehicle is not safe for operation. 1974 Op. Att'y Gen. No. 74-99.

Thirty-day grace period provided by Ga. L. 1965, p. 188, § 2 (see O.C.G.A. § 40-8-200) relates only to special inspections, and has no application to annual inspections. 1970 Op. Att'y Gen. No. U70-113.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 218, 219. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 742, 1098.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 621 et seq.

40-8-201. Duties of owners and drivers of vehicles.

(a) No person driving a vehicle shall refuse to submit such vehicle to an inspection and test when required to do so by the commissioner of public safety or an authorized officer of the Department of Public Safety.

(b) Every owner or driver, upon receiving a notice as provided in Code Section 40-8-200, shall comply therewith and shall within 30 days secure an official certificate of inspection and approval, which shall be issued in duplicate, one copy to be retained by the owner or driver and the other copy to be forwarded to the Department of Public Safety. In

lieu of compliance with this subsection, the vehicle shall not be operated, except as provided in subsection (c) of this Code section.

(c) No person shall operate any vehicle after receiving a notice with reference thereto as provided in Code Section 40-8-200 except as may be necessary to return such vehicle to the residence or place of business of the owner or driver, or to a garage, until such vehicle and its equipment have been placed in proper repair and adjustment and otherwise made to conform to the requirements of this article. A certificate of inspection and approval shall be obtained as promptly as possible thereafter.

(d) In the event repair or adjustment of any vehicle or its equipment is found necessary upon inspection, the owner of such vehicle may obtain such repair or adjustment at any place he may choose, but in every event an official certificate of inspection and approval must be obtained; otherwise, such vehicle shall not be operated upon the highways of this state. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 125; Ga. L. 1963, p. 333, § 1; Ga. L. 1965, p. 188, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Thirty-day grace period provided by Ga. L. 1965, p. 188, § 3 (see O.C.G.A. § 40-8-201) relates only to special inspections, and has no application to annual inspections. 1970 Op. Att'y Gen. No. U70-113.

Separate offenses for repeated use of unsafe vehicle. — Once a vehicle has been declared unsafe, a misdemeanor citation may be issued each time the vehicle is found moving on the highways for purposes other than effecting the requisite repairs. 1974 Op. Att'y Gen. No. 74-31.

Applicability as to vehicle with expired inspection certificate. — Provisions which permit the return of a vehicle to a place of residence, place of business, or a garage for the purpose of obtaining repairs after notice has been given by the director of the Department of Public Safety that the vehicle is in an unsafe condition are inapplicable in those cases which relate to vehicles bearing expired motor vehicle inspection certificates. 1967 Op. Att'y Gen. No. 67-166.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 218, 219. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 742.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 621 et seq.

ARTICLE 4

INSPECTION OF PUBLIC SCHOOL BUSES

Editor's notes. — Ga. L. 1982, p. 165, § 9, effective November 1, 1982, repealed the Code sections formerly appearing at this article and enacted the current article. The former article, relating to motor vehicle safety inspections, consisted of

Code Sections 40-8-220 through 40-8-223 (Part 1), 40-8-240 through 40-8-249 (Part 2), and 40-8-260 through 40-8-264 (Part 3), and was based on Ga. L. 1963, p. 333, § 1; Ga. L. 1965, p. 188, § 4; Ga. L. 1969, p. 271, §§ 2, 3; Ga. L. 1970, p. 438, § 6;

Ga. L. 1971, p. 258, § 1; Ga. L. 1971, p. 515, § 2; Ga. L. 1972, p. 901, §§ 1, 4-6; Ga. L. 1972, p. 989, § 1; Ga. L. 1973, p. 598, § 4; Ga. L. 1976, p. 216, §§ 1, 2; Ga. L. 1979, p. 906, § 1; and Ga. L. 1981, p. 1740, § 1.

Ga. L. 1982, p. 165, § 11, not codified by the General Assembly, provides: "The General Assembly finds that properly equipped and serviced vehicles contribute to the public welfare and safety of the citizens of Georgia through the reduction of motor vehicle accidents resulting from mechanical failure. The General Assembly also finds that it is the responsibility of all motorists to maintain their motor ve-

hicles in proper working condition. It is the intent of this Act to encourage all citizens to maintain their motor vehicles in safe operating condition. It is furthermore the intent of this Act to encourage the Department of Human Resources to promulgate rules and regulations specifying minimum safety standards for motor vehicles used to transport persons to and from day care centers or child care centers licensed by said department."

Administrative rules and regulations. — Public School Bus Inspection, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-30.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statute or ordinance requiring inspection of motor vehicles, 106 ALR 795.

Criminal responsibility for injury or death in operation of mechanically defective motor vehicle, 88 ALR2d 1165.

Effect of violation of safety equipment statute as establishing negligence in automobile accident litigation, 38 ALR3d 530.

40-8-220. Inspection of public school buses.

(a) Every school bus which is defined by paragraph (55) of Code Section 40-1-1 which is owned or operated by a state, county, or municipal government or under contract by any independent school system shall be inspected annually, or more frequently at the discretion of the commissioner of public safety, under the supervision of an employee of the Department of Public Safety.

(b) The employee of the department shall supervise the inspection of such vehicle to determine if such vehicle possesses in safe operating condition the equipment which is applicable to school buses required by Parts 1 through 4 of Article 1 of this chapter and the equipment required by Part 6 of Article 1 of this chapter.

(c) If such vehicle is found to meet the equipment and safety requirements specified in subsection (b) of this Code section, then the employee of the department making the inspection shall issue a school bus certificate of safety inspection to the vehicle.

(d) If such vehicle does not meet the equipment and safety requirements specified in subsection (b) of this Code section, then that vehicle shall not be operated on the streets and highways of this state, and no school bus certificate of safety inspection shall be issued to such vehicle.

(e) All public school buses shall be made available for the inspection required under this Code section, and no person shall conceal any bus required to be inspected under this Code section.

(f) The commissioner of public safety is authorized to implement any and all provisions of this Code section by the promulgation of necessary rules and regulations. When duly promulgated and adopted, all rules and regulations issued pursuant to this Code section shall have the force of law. (Code 1933, § 68E-208, enacted by Ga. L. 1979, p. 906, § 1; Code 1933, § 68E-501, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-249; Code 1981, § 40-8-220, enacted by Ga. L. 1982, p. 165, § 9; Ga. L. 1992, p. 6, § 40; Ga. L. 2000, p. 951, § 5B-8; Ga. L. 2005, p. 334, § 19-8/HB 501.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

40-8-221. Penalty.

Any person who violates any provision of this article shall be guilty of a misdemeanor. (Code 1981, § 40-8-221, enacted by Ga. L. 1982, p. 165, § 9.)

40-8-222 through 40-8-264.

Repealed by Ga. L. 1982, p. 165, § 9, effective November 1, 1982.

Editor's notes. — For further information as to the repealed Code sections, see the editor's notes at the beginning of this article.

ARTICLE 5

VEHICLE EQUIPMENT SAFETY COMPACT

40-8-280 through 40-8-291.

Repealed by Ga. L. 1983, p. 691, § 1, effective March 16, 1983.

Editor's notes. — This article was based on Ga. L. 1964, p. 463, §§ 1-12.

CHAPTER 9

REPORTING ACCIDENTS; GIVING PROOF OF
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- 40-9-80. Methods of giving proof; dura-
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Sec.

40-9-100. Assigned risk plan.

40-9-101. Reserved.

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40-9-102. Insurance for person renting U-drive-it vehicle.

40-9-103. Cooperation by insured with insurer in connection with defense of action or threatened action under policy.

Cross references. — Settlement offers and agreement for personal injury, bodily injury, and death from motor vehicle, § 9-11-67.1. Requirements of motor vehicle liability policies, and coverage of claims against uninsured motorists, § 33-7-11. Motor vehicle accident reparations, T. 33, C. 34. Motor carrier bond or insurance, § 40-1-112. Insurance requirements for operation of motor vehicles generally, § 40-6-10. Insurance requirements for operation of motorcycles, § 40-6-11. Proof of financial responsibility regarding motorcycles, § 40-6-12. Prosecution of separate causes of action for personal injury and property damage caused by wrongful or negligent operation of motor vehicle, § 51-1-32 et seq.

Administrative rules and regulations. — Safety responsibility, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Chapter 375-3-7.

Accident Reporting, Official Compilation of the Rules and Regulations of the

State of Georgia, Department of Driver Services, Regulation of Vehicles, Chapter 375-6-2.

Law reviews. — For article advocating compulsory automobile insurance, see 19 Ga. B.J. 207 (1956). For article arguing against compulsory automobile insurance, see 19 Ga. B.J. 209 (1956). For article advocating moderate reform of auto accident compensation system prior to Georgia's adoption of Ch. 34, T. 33, see 5 Ga. St. B.J. 321 (1969).

For comment on *Shropshire v. Caylor*, 94 Ga. App. 37, 93 S.E.2d 586 (1956), see 19 Ga. B.J. 527 (1957). For comment on *Austin v. Smith*, 96 Ga. App. 659, 101 S.E.2d 169 (1957), concerning gross negligence in relation to gratuitous automobile guest, see 20 Ga. B.J. 552 (1958). For comment on *Frankel v. Cone*, 214 Ga. 733, 107 S.E.2d 819 (1959), see 10 Mercer L. Rev. 338 (1959). For comment discussing the unconstitutionality of statutes imposing liability without fault, in light of *Corley v. Lewless*, 227 Ga. 745, 182 S.E.2d 766 (1971), see 9 Ga. St. B.J. 129 (1972).

JUDICIAL DECISIONS

ANALYSIS

DECISIONS UNDER PRIOR LAW

1. DECISIONS UNDER CODE 1933, CH. 68-3
2. DECISIONS UNDER GA. L. 1951, P. 565

Decisions Under Prior Law

1. Decisions Under Code 1933, CH. 68-3

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1951, p. 565 and former Code 1933, Ch. 68-3, which dealt with civil liability, are included in the

annotations for this Code section.

Constitutionality. — Former Code 1933, Ch. 68-3 clearly violated the due process clause of both the federal and state Constitutions for the reason that the statute made the owner of a motor vehicle liable if the vehicle was being used in the prosecution of the business of, or for the benefit of, the owner, even though the

vehicle was operated without notice to the owner, or without the owner's knowledge and consent, express or implied. *Frankel v. Cone*, 214 Ga. 733, 107 S.E.2d 819 (1959), overruled on other grounds, *Lott Inv. Corp. v. Gerbing*, 242 Ga. 90, 249 S.E.2d 561 (1978), commented on in 10 *Mercer L. Rev.* 338 (1959) (decided under former Code 1933, Ch. 68-3).

Former Code 1933, Ch. 68-3 was unconstitutional. *Redd v. Brisbon*, 113 Ga. App. 23, 147 S.E.2d 15 (1966) (decided under former Code 1933, Ch. 68-3).

Purpose of traffic laws. — Georgia lawmakers enacted traffic laws to address the problem of injury and damage, daily occurring in this state and elsewhere, resulting from the careless, incompetent, and unlawful operation of automobiles and other motor vehicles along the roads and highways. *Jones v. Dixie Drive It Yourself Sys.*, 97 Ga. App. 669, 104 S.E.2d 497 (1958) (decided under former Code 1933, Ch. 68-3).

Chapter unambiguous. — Former Code 1933, Ch. 68-3, having clearly and plainly made the owner liable when the vehicle is negligently operated for the owner's benefit, is unambiguous and not open to any other construction. *McElroy v. McCord*, 213 Ga. 695, 100 S.E.2d 880 (1957) (decided under former Code 1933, Ch. 68-3).

Owner liable when vehicle's operation to owner's substantial benefit. — Former Code 1933, Ch. 68-3 did not require that the operation of the vehicle be for the sole benefit of the owner, and must be construed so as to render the owner liable when the operation is a substantial benefit to the owner and rendered pursuant to the owner's procurement. The effect of this law was to extend the liability of owners of motor vehicles and to render the owners liable for the imputed negligence of another, since, under preexisting law, there would be no such liability, and in effect made proof of the benefit conferred on the owner the equivalent of proof of agency so as to impute the negligence of the operator to the owner. *Shropshire v. Caylor*, 94 Ga. App. 37, 93 S.E.2d 586 (1956), commented on in 19 *Ga. B.J.* 527 (1957). (decided under former Code 1933, Ch. 68-3).

Allegation that defendant acted as owner's agent. — Allegation that the defendant was at the time of an automobile accident an agent and employee of the owner of the vehicle, acting within the course and scope of employment, with the express permission and consent, and for the benefit of the latter, is a sufficient allegation of agency to bind the owner for the tortious misconduct of the defendant. *Belch v. Sprayberry*, 97 Ga. App. 47, 101 S.E.2d 870 (1958) (decided under former Code 1933, Ch. 68-3).

Allegation that operator holds title for benefit of defendant. — When, in an action growing out of the negligent operation of an automobile, the liability of the defendant is dependent upon the defendant's right to the possession, dominion, and control of the property, the mere allegation that the operator holds trust title to the property for the benefit and convenience of the defendant is insufficient to show such possession, dominion, and control on the part of the defendant as will sustain the action. *Belch v. Sprayberry*, 97 Ga. App. 47, 101 S.E.2d 870 (1958) (decided under former Code 1933, Ch. 68-3).

Circumstances under which driver agent of bailee. — When the owner of an automobile arranges with the owners of a certain service station to have the owner's car washed and greased and, by arrangement with an employee of the service station, the car is to be returned to the owner after the work on the car has been completed, the agreement to redeliver the car is a part of the contract of bailment and the car's driver is the agent of the bailee, not the bailor. *Shropshire v. Caylor*, 94 Ga. App. 37, 93 S.E.2d 586 (1956), commented on in 19 *Ga. B.J.* 527 (1957) (decided under former Code 1933, Ch. 68-3).

Verdict against owner unsupported by evidence. — There being no evidence in an action for damages resulting from a tractor-car accident, direct or circumstantial, sufficient to authorize an inference that the owner knew of or consented to the owner's farm tractor being driven by the owner's grandson when the accident occurred, and no evidence as to a course of conduct from which such consent could be implied, the verdict against the owner was

Decisions Under Prior Law (Cont'd)**1. Decisions Under Code 1933, CH. 68-3 (Cont'd)**

wholly without evidence to support the verdict. *Powell v. Mauldin*, 102 Ga. App. 606, 117 S.E.2d 234 (1960) (decided under former Code 1933, Ch. 68-3).

2. Decisions Under Ga. L. 1951, P. 565

Duties and actions of department in suspending licenses constitutional. — Duties and actions of the Department of Public Safety in suspending licenses under Ga. L. 1951, p. 565 when there is neither insurance nor financial ability to compensate others for damages from accidents are all clearly administrative, and therefore are not judicial, in violation of the state Constitution. *Turmon v. Department of Pub. Safety*, 222 Ga. 843, 152 S.E.2d 884 (1967) (decided under Ga. L. 1951, p. 565).

Chapter wise, just, and valid. — Ga. L. 1951, p. 565, which attaches the penalty of withdrawing the license when a licensee is not complying with that law and is involved in a wreck, is wise, just,

and valid. *Turmon v. Department of Pub. Safety*, 222 Ga. 843, 152 S.E.2d 884 (1967) (decided under Ga. L. 1951, p. 565).

Purpose of insurance certificate. — Effect of a certificate issued to the Department of Public Safety by an insurance company, if that certificate states that a person has been issued an operator's policy, is to certify that the person has automobile liability insurance which covers the person while operating a motor vehicle, regardless of whether or not the motor vehicle is being used as a livery conveyance. *Davis v. Reserve Ins. Co.*, 220 Ga. 335, 138 S.E.2d 657 (1964) (decided under Ga. L. 1951, p. 565).

Insurer barred from asserting coverage nonexistent following certification. — An insurer will be barred from asserting that coverage does not exist under an automobile liability policy if the insurer has certified, in accordance with a financial responsibility law, that the policy issued to the insured does provide such coverage, and a driver's license is issued on the basis of the certificate. *Davis v. Reserve Ins. Co.*, 220 Ga. 335, 138 S.E.2d 657 (1964) (decided under Ga. L. 1951, p. 565).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1951, p. 565 are included in the annotations for this Code section.

Persons in military service. — De-

partment is not precluded from implementing provisions of Ga. L. 1951, p. 565 against one in military service. 1969 Op. Att'y Gen. No. 69-428 (rendered under Ga. L. 1951, p. 565).

RESEARCH REFERENCES

ALR. — Responsibility of public officer for negligence of subordinate in operation of vehicle, 3 ALR 149.

Dangerous instrumentality doctrine as applied to automobile, 16 ALR 270.

Liability of employer for injuries inflicted by automobile while being driven by or for salesman or collector, 17 ALR 621; 29 ALR 470; 54 ALR 627; 107 ALR 419.

Automobile liability insurance, 28 ALR 1301; 41 ALR 507.

Liability of undertaker or funeral director for injury to passenger in vehicle furnished by former, 29 ALR 827.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or licensing of operator, 35 ALR 62; 38 ALR 1038; 43 ALR 1153; 54 ALR 374; 58 ALR 532; 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375.

Automobiles: liability of owner for negligence of one to whom car is loaned or hired, 36 ALR 1137; 68 ALR 1008; 100 ALR 920; 168 ALR 1364.

Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 37 ALR 1465; 52 ALR 701; 63 ALR 688; 94 ALR 948.

T.40, C.9 REPORTING ACCIDENTS; PROOF OF FINANCIAL RESP. T.40, C.9

Ownership of automobile as prima facie evidence of responsibility for negligence of person operating it, 42 ALR 898; 74 ALR 951; 96 ALR 634.

Chauffeur in general employment of owner as servant for time being of owner, or of borrower of car, 42 ALR 1446.

Liability for injury to child playing on or in proximity to automobile, 44 ALR 434.

Liability of owner for negligence of one permitted by the former's servant, or member of his family, to drive automobile, 44 ALR 1382; 54 ALR 851; 98 ALR 1053; 134 ALR 974.

Personal care required of one riding in an automobile driven by another as affecting his right to recover against third persons, 47 ALR 293; 63 ALR 1432; 90 ALR 984.

Automobiles: liability of owner or operator for injury to guest, 47 ALR 327; 51 ALR 581; 61 ALR 1252; 65 ALR 952.

Constitutionality and effect of statute relating to civil liability of person driving automobile while under influence of liquor, 56 ALR 327.

Liability for damage or injury by skidding motor vehicle, 58 ALR 264; 113 ALR 1002.

Driving automobile at a speed which prevents stopping within length of vision as negligence, 58 ALR 1493; 87 ALR 900; 97 ALR 546.

Liability of master for injury to one whom servant, in violation of instructions, permits to ride on vehicle, 62 ALR 1167; 74 ALR 163.

Owner's liability for injury by automobile while being used for servant's own pleasure or business, 68 ALR 1051; 51 ALR2d 8; 51 ALR2d 120; 52 ALR2d 350.

Liability for injury in collision with automobile standing on wrong side of street or highway, 70 ALR 1021.

Right, as against vehicle owner, of one not in his general employment injured while assisting in remedying conditions due to accident to automobile or truck in highway, 72 ALR 1283.

Excessive speed of automobile as proximate cause of accident where it or colliding vehicle is on wrong side of road, 77 ALR 598.

Liability for damages by vehicle trailers, 84 ALR 281.

Automobiles: liability of parent for injury to or death of child's guest by negligent operation of car, 88 ALR 590.

Liability of owner under "family purpose" doctrine, for injuries by automobile while being used by member of his family, 88 ALR 601; 100 ALR 1021; 132 ALR 981.

What conduct in driving automobile amounts to wantonness, willfulness, or the like, precluding defense of contributory negligence, 92 ALR 1367; 119 ALR 654.

What amounts to gross negligence, recklessness, or the like, within statute limiting liability of owner or operator of automobile for injury to guest, 96 ALR 1479.

Evidence of specific acts or reputation as admissible to prove incompetency of motor vehicle driver, or defendant's knowledge thereof, in action against one permitting alleged incompetent to drive, 120 ALR 1311.

Distraction of attention of driver of automobile as affecting question of negligence, wantonness, etc., or contributory negligence, 120 ALR 1513.

Liability of owner or one in charge of automobile for injury due to its condition, to one, other than his employee or bailee for use, engaged in some service or operation in connection with it, 122 ALR 1023.

Admissibility and weight of evidence as to condition of automobile or parts thereof after accident, on issue as to responsibility for accident, 129 ALR 438.

Necessity and sufficiency, in complaint or declaration in action for injury or damage due to dangerous condition of automobile or other machine, of allegations as to particular defects, 129 ALR 1274.

Injury to guest of operator as within statutory or nonstatutory rule which makes owner of automobile liable for negligence of another operating the car with his consent, 131 ALR 891.

Civil or criminal liability of one in charge of an automobile who permits an unlicensed person to operate it, 137 ALR 475.

Conduct of operator of automobile at railroad crossing as gross negligence, recklessness, etc., within guest statute, 143 ALR 1144.

Commencement and termination of

host and guest relationship within statute or rule as to liability for injury to automobile guest, 146 ALR 682.

Infant owner as within statute which makes owner of automobile responsible or creates a lien for injury or death inflicted by another operating automobile, 146 ALR 701.

Liability of owner of automobile for negligence while it is being operated by another with his consent as affected by immunity of the operator (or his employer) from liability or action, 152 ALR 1058.

Scope of consent or permission with respect to time or place of operation of car by another as affecting owner's liability for injury, 159 ALR 1309.

Automobile owner's common-law liability for negligence in entrusting car to known incompetent, reckless, or inexperienced person as affected by statute limiting owner's liability to use within terms of consent, 163 ALR 1418.

Guest's knowledge that automobile driver has been drinking as precluding recovery, under guest statutes or equivalent common-law rule, 15 ALR2d 1165.

Joint enterprise rules as applicable to the hiring, lease, or bailment of an airplane, 18 ALR2d 929.

Liability of motor vehicle owner or operator for accident occasioned by blowout or other failure of tire, 24 ALR2d 161.

Liability for injury incident to towing automobile, 30 ALR2d 1019.

Proof, in absence of direct testimony by survivors or eyewitnesses, of who, among occupants of motor vehicle, was driving it at time of accident, 32 ALR2d 988.

Right of motor vehicle owner liable to injured third person because of negligence of one permitted to drive, to indemnity from the latter or the latter's employer to whom vehicle was bailed, 43 ALR2d 879.

Deviation from employment in use of employer's car during regular hours of work, 51 ALR2d 8; 51 ALR2d 120; 52 ALR2d 350.

Route driver or salesman as independent contractor or employee of merchandise producer or processor, for purposes of respondeat superior doctrine, 53 ALR2d 183.

Liability of employer for negligent operation of motor vehicle by automobile salesman, 53 ALR2d 631.

Rights of seller of motor vehicle with respect to purchase price or security on failure to comply with laws concerning transfer of title, 58 ALR2d 1351.

Vehicle owner or his agent having general right of possession and control as guest of driver within automobile guest statute or similar rule, 65 ALR2d 312.

Intoxication, unconsciousness, or mental incompetency of person as affecting his status as guest within automobile guest statute or similar common-law rule, 66 ALR2d 1319.

Liability of taxicab carrier to passenger injured while boarding vehicle, 75 ALR2d 988.

Liability for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 ALR3d 271.

Share-the-ride arrangement or car pool as affecting status of automobile rider as guest, 10 ALR3d 1087.

Liability based on entrusting automobile to one who is intoxicated or known to be excessive user of intoxicants, 19 ALR3d 1175.

What amounts to negligence within meaning of statutes penalizing negligent homicide by operation of a motor vehicle, 20 ALR3d 473.

Liability of motorist who left key in ignition for damage or injury caused by stranger operating the vehicle, 45 ALR3d 787.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 ALR3d 13.

Constitutionality of automobile and aviation guest statutes, 66 ALR3d 532.

Infant as guest within automobile guest statutes, 66 ALR3d 601.

Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 ALR3d 739.

Motor carrier's liability for personal injury or death of passenger caused by debris, litter, or other foreign object on floor or seat of vehicle, 1 ALR4th 1249.

Combining or "stacking" uninsured motorist coverages provided in policies issued by different insurers to different insureds, 28 ALR4th 362.

Automobiles: liability for U-Turn collisions, 53 ALR4th 849.

ARTICLE 1
GENERAL PROVISIONS

40-9-1. Short title.

This chapter shall be known and may be cited as the “Motor Vehicle Safety Responsibility Act.” (Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-2. Definitions.

As used in this chapter, the term:

(1) “Accident” means the collision of any motor vehicle with another vehicle or with any object or fixture, or involvement of a motor vehicle in any manner in which any person is killed or injured or in which damage to the property of any one person to an extent of \$500.00 or more is sustained.

(2) “Commissioner” means the commissioner of driver services.

(3) “Department” means the Department of Driver Services.

(4) “Operator” means every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(5) “Proof of financial responsibility” means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of said proof in the amounts specified in subparagraph (a) (1) (A) of Code Section 33-7-11.

(6) “Suspension of driver’s license” means the temporary withdrawal by formal action of the department of a resident’s license or nonresident’s privilege to operate a motor vehicle on the public highways. (Ga. L. 1951, p. 565, § 1; Ga. L. 1956, p. 543, §§ 2-5; Code 1933, § 68C-101, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1978, p. 1494, § 2; Ga. L. 1982, p. 1751, § 1; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 938, § 2; Ga. L. 1990, p. 649, § 1; Ga. L. 1991, p. 1608, § 2.2; Ga. L. 1994, p. 363, § 2; Ga. L. 2000, p. 951, § 6-1; Ga. L. 2000, p. 1516, § 2; Ga. L. 2005, p. 334, § 20-1/HB 501.)

Editor’s notes. — Ga. L. 1982, p. 1751, § 1, effective July 1, 1982, amended Code 1933, § 68C-101, the basis for this Code section. Since the 1982 Act did not specifically amend this Code section, and since the Code of Georgia of 1933, as amended, stood repealed on November 1, 1982 (see

Code Section 1-1-10(a)(1)), no effect could be given to the 1982 amendment after that date. The provisions of the 1982 Act were reenacted in substantially similar form as an amendment to this Code section by Ga. L. 1983, p. 3, § 29.

Law reviews. — For note on 1991

amendment of this Code section, see 8 Ga. St. U.L. Rev. 99 (1992).

For comment on *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971),

see 23 Mercer L. Rev. 383 (1972). For comment on *Pope v. Cokinos*, 232 Ga. 425, 207 S.E.2d 63 (1974), see 26 Mercer L. Rev. 337 (1974).

JUDICIAL DECISIONS

When coverage requirements not applicable. — Minimum compulsory liability limits established by a rule of the Public Service Commission were applicable to personal injury claims asserted by passengers in a tractor-trailer, when the passengers sought recovery up to minimum limits of \$100,000/\$300,000 as established by the rule, and were not subject to the lower limits established by

O.C.G.A. § 40-9-2, even though the tractor-trailer was not a passenger carrier. *Guinn Transp., Inc. v. Canal Ins. Co.*, 234 Ga. App. 235, 507 S.E.2d 144 (1998).

Cited in *Smith v. Employers' Fire Ins. Co.*, 255 Ga. 596, 340 S.E.2d 606 (1986); *Georgia Farm Bureau Mut. Ins. Co. v. Burch*, 222 Ga. App. 749, 476 S.E.2d 62 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Accidents occurring on private property. — All accidents, as defined by Ga. L. 1951, p. 565, must be reported,

even though the accident may occur on private property. 1972 Op. Att'y Gen. No. U72-34.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 57 et seq., 112 et seq., 141 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 282, 310.

ALR. — Insurance covering damage to

automobile by accident or collision, 105 ALR 1426.

Automobile insurance: umbrella or catastrophe policy automobile liability coverage as affected by primary policy "other insurance" clause, 67 ALR4th 14.

40-9-3. Administration of chapter; rules and regulations; hearings; appeals.

(a) The commissioner shall administer and enforce this chapter and is authorized to adopt and enforce rules and regulations necessary for its administration. The commissioner shall prescribe suitable forms requisite or deemed necessary for the purposes of this chapter.

(b) The commissioner shall provide for hearings upon request of persons aggrieved by orders or acts of the commissioner under this chapter. Such hearings shall not be subject to the procedural provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) The commissioner is authorized to adopt and enforce rules and regulations necessary for the administration of such hearings, including but not limited to, hearings provided in Code Section 40-9-32. Except as provided in Code Section 40-9-32, a request for a hearing under this chapter shall not operate as a stay of any order or act of the commissioner.

(d) The commissioner's decision as rendered at such hearing shall be final unless the aggrieved person shall desire an appeal, in which case he or she shall have the right to enter an appeal to the superior court of the county of his or her residence or the Superior Court of Fulton County by filing a complaint in the superior court, naming the commissioner as defendant, within 30 days from the date the commissioner enters his or her decision or order. The appellant shall not be required to post any bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at term or in chambers or before a jury at the first term. The hearing on the appeal shall be de novo. However, such appeal shall not act as a supersedeas of any order or acts of the commissioner, nor shall the appellant be allowed to operate or permit a motor vehicle to be operated in violation of any suspension or revocation by the commissioner while such appeal is pending. (Ga. L. 1951, p. 565, § 2; Ga. L. 1956, p. 543, § 6; Ga. L. 1973, p. 509, § 1; Code 1933, § 68C-201, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2000, p. 951, § 6-2; Ga. L. 2003, p. 484, § 13; Ga. L. 2004, p. 749, § 9; Ga. L. 2005, p. 334, § 20-1/HB 501.)

JUDICIAL DECISIONS

Commissioner's refusal to consider evidence constitutional. — Since Ga. L. 1951, p. 565 authorizes judicial review of all administrative actions, the refusal by the department (now commissioner) to consider evidence as to who was responsible does not violate the requirements of due process. *Turmon v. Department of Pub. Safety*, 222 Ga. 843, 152 S.E.2d 884 (1967).

No conflict with chapter on Uniform Rules of Road. — Ga. L. 1951, p. 565 is not in irreconcilable conflict with this section, which confers upon the commissioner the power to cancel driver's licenses. *Turmon v. Department of Pub. Safety*, 222 Ga. 843, 152 S.E.2d 884 (1967) (see O.C.G.A. Ch. 6, T. 40).

Exhaustion of administrative remedies. — When the plaintiff made no attempt to comply with the provisions for

the reinstatement of the plaintiff's license, which had been lawfully revoked by the department (now commissioner), the trial court was correct in holding that the plaintiff had not exhausted the plaintiff's remedies and, therefore, refusing a mandamus absolute. *Murphy v. Dominy*, 211 Ga. 70, 84 S.E.2d 193 (1954).

Under Georgia law, the director (now commissioner) of public safety has jurisdiction over the suspension of licenses when no security is furnished following an accident and when no liability insurance covers the vehicle involved or the operator. In such a case, the failure to exhaust administrative remedies or to appeal to the superior court is fatal to any action for relief by the aggrieved person in regard to the license brought in another court. *Sellers v. State Farm Mut. Auto. Ins. Co.*, 314 F. Supp. 78 (S.D. Ga. 1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 21.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 29 et seq., 33, 34.

ALR. — Requirement that

multicoverage umbrella insurance policy offer uninsured or underinsured motorist coverage equal to liability limits under umbrella provisions, 52 ALR 5th 451.

40-9-4. Exceptions to application of chapter.

This chapter shall not apply with respect to any motor vehicle owned by the United States, the State of Georgia, any political subdivision of this state, or any municipality therein, or any motor carrier required by any other law to file evidence of insurance or other surety. Code Sections 40-9-81, 40-9-7, 40-9-8, and 40-9-12 shall apply as to the operator of such motor vehicles. All provisions of this chapter shall apply to the operator of such motor vehicles while on unofficial business. (Ga. L. 1951, p. 565, § 15; Ga. L. 1956, p. 543, § 19; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-603, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 2005, p. 334, § 20-1/HB 501.)

JUDICIAL DECISIONS

Cited in *Scott v. Joe Thomson Auto Rental & Leasing, Inc.*, 257 Ga. App. 453, 571 S.E.2d 475 (2002).

RESEARCH REFERENCES

ALR. — Automobile liability insurance, 41 ALR 507.

40-9-5. Application of chapter to nonresidents, unlicensed drivers, and unregistered vehicles; accidents in other states.

(a) If the operator or the owner of a vehicle involved in an accident in this state has no license, such operator shall not be allowed a license until he or she has complied with the requirements of this chapter to the same extent that would be necessary if, at the time of the accident, he or she had held a license in this state.

(b) When a nonresident's operating privilege is suspended pursuant to Code Section 40-9-33 or 40-9-61, the department shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (c) of this Code section.

(c) Upon receipt of a certification that the operating privilege of a resident of this state has been suspended in another state pursuant to a law providing for its suspension for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a nonresident's operating privilege had the accident occurred in this state, the department shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his

or her compliance with the laws of such other state relating to the showing of proof of financial responsibility or reinstatement of operating privilege. (Ga. L. 1951, p. 565, § 8; Ga. L. 1956, p. 543, § 16; Ga. L. 1958, p. 694, § 4; Code 1933, § 68C-306, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-6. Transfer of registration of vehicle after registration suspended.

Reserved. Repealed by Ga. L. 2005, p. 334, § 20-1/HB 501, effective July 1, 2005.

Editor's notes. — This Code section Code 1933, § 68C-701, enacted by Ga. L. was based on Ga. L. 1951, p. 565, § 12; 1977, p. 1014, § 1.

40-9-7. Surrender of license after suspension.

(a) Any person whose driver's license shall have been suspended under any provision of this chapter shall immediately return his or her license to the department. If any person shall fail to return such license to the department, the department shall direct any peace officer to secure possession thereof and to return it to the department.

(b) Any person willfully failing to return his or her driver's license as required in subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00 or by imprisonment for not more than 30 days, or by both such fine and imprisonment. (Ga. L. 1951, p. 565, § 14; Code 1933, § 68C-702, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-8. Operating vehicle during suspension of driver's license or operating privilege.

Any person whose driver's license or nonresident's operating privilege has been suspended under this chapter and who, during such suspension, drives any motor vehicle upon any highway, except where permitted under this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than five days nor more than six months and there may be imposed in addition thereto a fine of not more than \$500.00. (Ga. L. 1951, p. 565, § 14; Ga. L. 1969, p. 819, § 5; Code 1933, § 68C-704, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-9. Reinstatement of driver's license; fee.

Whenever a driver's license is suspended under any provisions of this chapter and the filing of proof of financial responsibility is made a

prerequisite to reinstatement of such license, no such license shall be reinstated unless the driver or owner, in addition to complying with the other provisions of this chapter, pays to the department a fee of \$25.00. Only one such fee shall be paid by any one person irrespective of the number of licenses to be reinstated. The fees paid pursuant to this Code section shall be expendable receipts to be used only by the department toward the cost of administration of this chapter. (Ga. L. 1963, p. 593, § 9; Ga. L. 1969, p. 819, § 6; Code 1933, § 68C-605, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1983, p. 487, § 3; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-10. Chapter supplemental.

This chapter shall in no respect be considered as a repeal of the state motor vehicle laws but shall be construed as supplemental thereto. (Ga. L. 1951, p. 565, § 18; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-606, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-11. Chapter not to prevent other process.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (Ga. L. 1951, p. 565, § 20; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-607, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-12. Violations generally.

Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be guilty of a misdemeanor. (Ga. L. 1951, p. 565, § 14; Code 1933, § 68C-705, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

ARTICLE 2

REPORTING ACCIDENTS; GIVING SECURITY FOR DAMAGES

JUDICIAL DECISIONS

Cited in *Patterson v. Commercial Union Ins. Co.*, 151 Ga. App. 86, 258 S.E.2d 748 (1979).

RESEARCH REFERENCES

ALR. — Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 ALR3d 739.

40-9-30. Fee for copy of accident report.

The Department of Transportation, or its third-party designee, shall charge a fee of \$5.00 for each copy of any accident report received and maintained by that department or its designee pursuant to Code Section 40-6-273. (Code 1981, § 40-9-30, enacted by Ga. L. 1991, p. 309, § 1; Ga. L. 2005, p. 334, § 20-2/HB 501; Ga. L. 2011, p. 583, § 12/HB 137.)

Cross references. — Duty to report accident resulting in injury, death, or property damage, § 40-6-273.

Editor's notes. — Former Code Section 40-9-30, pertaining to the requirement that accidents be reported, which

was repealed by Ga. L. 1990, p. 591, § 1, was based on Ga. L. 1951, p. 565, § 4; Ga. L. 1956, p. 543, § 8; Ga. L. 1963, p. 593, § 1; Ga. L. 1964, p. 225, § 1; Ga. L. 1977, p. 1014, § 1; Ga. L. 1978, p. 1494, § 3; Ga. L. 1979, p. 826, § 3.

40-9-31. Submission of accident reports to department.

Each state and local law enforcement agency shall submit to the Department of Transportation the original document of any accident report prepared by such law enforcement agency or submitted to such agency by a member of the public. If the Department of Driver Services receives a claim requesting determination of security, the Department of Transportation shall provide a copy or an electronic copy of any relevant accident reports to the Department of Driver Services. Any law enforcement agency may transmit the information contained on the accident report form by electronic means, provided that the Department of Transportation has first given approval to the reporting agency for the electronic reporting method utilized. The law enforcement agency shall retain a copy of each accident report. Any law enforcement agency that transmits the data by electronic means must transmit the data using a nonproprietary interchangeable electronic format and reporting method. For purposes of this Code section, the term 'nonproprietary' shall include commonly used report formats. All such reports shall be submitted to the Department of Transportation not more than 15 days following the end of the month in which such report was prepared or received by such law enforcement agency. The Department of Transportation is authorized to engage the services of a third party in fulfilling its responsibilities under this Code section. (Code 1981, § 40-9-31, enacted by Ga. L. 1994, p. 362, § 1; Ga. L. 1999, p. 871, § 1; Ga. L. 2000, p. 951, § 6-3; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 20-2/HB 501; Ga. L. 2011, p. 583, § 13/HB 137.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, the subsection (a) designation was deleted.

Editor's notes. — Former Code Section 40-9-31, concerning penalties for fail-

ure to report accident or giving false information in a report, was based on Ga. L. 1951, p. 565, § 14; Ga. L. 1977, p. 1014, § 1 and was repealed by Ga. L. 1990, p. 591, § 2, effective July 1, 1990.

40-9-32. Determination of amount of security required; time limitation on consideration of accident report, notice, or claim; administrative hearing; judicial review.

(a) The department, not less than 30 days after receipt of an accident report or notice of an accident with respect to which a person claims under oath to have suffered damages and requests determination of security, shall determine the amount of security sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident that may be recovered against each operator and owner. Such determination shall be made on the basis of the reports or other information submitted. Notwithstanding any other provisions of this chapter, the department shall not consider or take any action with respect to an accident report, notice of accident, or any claim filed under this Code section which is received more than six months after the date of the accident.

(b) The department, upon determining the amount of security required, shall give written notice to each operator and owner of the amount of security required to be deposited by him or her. Such notice shall state that each operator's license shall be suspended on the thirtieth day from the date of mailing of notice unless within that time the required security is deposited and such owner or operator shall give proof of financial responsibility for the future. The license of the one depositing the security will not then be suspended.

(c)(1) Any person so notified may, within ten days after receipt of such notification, make a written request to the department for a hearing. Such request shall operate as a stay of any suspension pending the outcome of such hearing. The scope of such hearing, for the purposes of this Code section, shall cover the issues of whether there is a reasonable possibility that a judgment could be rendered against such person in an action arising out of the accident and whether such person is exempt from the requirement of depositing security under Code Section 40-9-34. The department may also consider at such hearing the amount of security required. The requirements of depositing security under this Code section shall not apply to any person against whom the department has found that there is not a reasonable possibility of a judgment being rendered.

(2) For the purposes of this Code section, a hearing may consist of a department determination of such issues, such determination to be based solely on written reports submitted by the operator or owner and by investigatory officers, provided that the owner or operator in his or her request to the department for a hearing has expressly consented to this type of hearing and that the department has also consented thereto.

(d) Any person required to give security after a hearing as provided in subsection (c) of this Code section may petition for judicial review of the decision of the department, but suspension of such person's driver's license or operating privilege shall not be stayed while such appeal is pending. The superior court upon such appeal may consider the written reports considered by the department at the hearing as authorized by subsection (c) of this Code section. (Ga. L. 1951, p. 565, §§ 9, 11; Ga. L. 1963, p. 593, §§ 2, 3; Ga. L. 1964, p. 225, § 2; Ga. L. 1969, p. 819, § 2; Code 1933, §§ 68C-302, 68C-310, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1985, p. 1647, §§ 1, 2; Ga. L. 1986, p. 10, § 40; Ga. L. 1994, p. 859, § 1; Ga. L. 2005, p. 334, § 20-2/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, the paragraph (1) and (2) designations were added to the existing language of subsection (c).
Law reviews. — For comment on *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586, 29

L. Ed. 2d 90 (1971), discussing the revocation of a motorist's license pursuant to the state's financial responsibility laws, without a hearing to determine fault, prior to the enactment of Ga. L. 1977, p. 1014, § 1, see 8 Ga. St. B.J. 252 (1971).

JUDICIAL DECISIONS

Failure to exhaust administrative remedies or appeal. — Under Georgia law, the director (now commissioner) of public safety has jurisdiction over the suspension of licenses when no security is furnished following an accident and when no liability insurance covers the vehicle involved or the operator. In such a case, the failure to exhaust administrative remedies or to appeal to the superior court is fatal to any action for relief by the aggrieved person in regard to the license brought in another court. *Sellers v. State*

Farm Mut. Auto. Ins. Co., 314 F. Supp. 78 (S.D. Ga. 1970).
Driver found not guilty of traffic violation. — Superior court erred in reversing the suspension of a driver's license and holding that merely because the driver was found not guilty of a traffic violation, there could be no reasonable possibility that a civil judgment could be rendered against the driver. *Miles v. Carr*, 224 Ga. App. 247, 480 S.E.2d 282 (1997).
Cited in *Hall v. Regal Ins. Co.*, 202 Ga. App. 511, 414 S.E.2d 669 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Persons in military service. — Department is not precluded from implementing provisions of Ga. L. 1951, p. 565

against one in military service. 1969 Op. Att'y Gen. No. 69-428.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, § 25 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 287, 379 et seq., 387 et seq.

40-9-33. Suspension of driver's license or operating privilege for failure to deposit security.

(a) In the event that any person required to deposit security fails to deposit such security within 30 days from the date of mailing of notice

as provided in Code Section 40-9-32 and such person does not make a timely request for a hearing, or in the event any person fails to deposit security after the department has determined that there exists a reasonable possibility of a judgment being rendered against such person, the department shall thereupon suspend:

(1) The driver's license of such person; and

(2) If such person is a nonresident, the privilege of operating or permitting the operation of a vehicle within this state.

(b) The license or nonresident's operating privilege shall remain so suspended and shall not be restored, nor shall any such license be issued to such person, nor shall such nonresident's operating privilege be restored, until:

(1) Such person shall deposit or there shall be deposited on his or her behalf the security and proof of financial responsibility for the future as required by this chapter;

(2) One year shall have elapsed following the date of such suspension and evidence satisfactory to the department has been filed with it that during the period of suspension no action for damages arising out of the accident has been instituted; or

(3) Evidence satisfactory to the commissioner has been filed with him or her of a release from liability or a final adjudication of nonliability. (Ga. L. 1951, p. 565, §§ 5, 7; Ga. L. 1956, p. 543, § 9; Ga. L. 1963, p. 593, § 4; Code 1933, § 68C-303, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-2/HB 501.)

Law reviews. — For comment on *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971), discussing the revocation of a motorist's license pursuant to

the state's financial responsibility laws, without a hearing to determine fault, prior to the enactment of Ga. L. 1977, p. 1014, § 1, see 8 Ga. St. B.J. 252 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92A-605, are included in the annotations for this Code section.

No prior hearing is necessary for suspension of a driver's license under due process requirements. *Roberts v. Burson*, 322 F. Supp. 380 (N.D. Ga. 1969) (decided under former Code 1933, § 92A-605).

Security required to respond for liability. — Safety Responsibility Act requires the depositing of security as proof of ability to respond in damages for the liability by the operator or owner of a motor vehicle involved in an accident so that the owner or operator will not have their operator's driver's license and registration certificate suspended. *Fitzgerald v. Universal Underwriters Ins. Co.*, 132 Ga. App. 610, 208 S.E.2d 619 (1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 172 et seq.
C.J.S. — 60A C.J.S., Motor Vehicles, §§ 379 et seq., 387 et seq.

40-9-34. Exceptions to requirement of security.

The requirements as to security and suspension provided in Code Sections 40-9-32 and 40-9-33 shall not apply:

(1) To the operator or owner of the vehicle involved in the accident if the owner had in effect at the time of the accident an automobile liability policy with respect to the vehicle involved in the accident, except that a driver shall not be so exempt if at the time of the accident the vehicle was being operated without the owner's permission, express or implied;

(2) To the operator, if he is not the owner of the vehicle involved in the accident but there was in effect at the time of the accident an automobile liability policy with respect to his driving of vehicles not owned by him which provided him with liability coverage in the operation of the motor vehicle involved in such accident;

(3) To an operator or owner whose liability for damages resulting from the accident is, in the judgment of the department, covered by any other form of liability insurance policy;

(4) To any person qualifying as a self-insurer under Code Section 33-34-5.1 or to any person operating a vehicle for such self-insurer;

(5) To the operator or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(6) To the operator or the owner of a motor vehicle legally parked at the time of the accident;

(7) To the owner of a vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such vehicle without such permission;

(8) To a resident of this state involved in an accident with a nonresident of this state when the damage is less than \$300.00, except upon the written request of any party in interest;

(9) If, prior to the date that the department would otherwise suspend a license and registration or a nonresident's operating privilege under Code Section 40-9-33, there shall be filed with the department evidence satisfactory to it that the person who would

otherwise have to file security has been released from liability or finally adjudicated not to be liable. (Ga. L. 1951, p. 565, §§ 5, 6; Ga. L. 1956, p. 543, §§ 9, 11; Code 1933, § 68C-304, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2000, p. 1246, § 17.)

Cross references. — Requirements regarding automobile liability policies generally, § 33-34-3.

JUDICIAL DECISIONS

Individual must deposit security unless policy covers liability. — If an individual's liability policy covers the individual's potential liability to any person aggrieved after an accident the individual does not have to deposit any security. If the individual has no insurance at all, or the policy does not cover the particular type of liability claim, the individual must comply with the requirements of proof of financial responsibility. *Fitzgerald v. Universal Underwriters Ins. Co.*, 132 Ga. App. 610, 208 S.E.2d 619 (1974).

Effect of void business exclusion in

policy. — An automobile policy exclusion for the insured using a vehicle "while employed or otherwise engaged in any business" was void as against public policy to the extent of the mandatory monetary requirements in effect at the time of the collision. *Federated Mut. Ins. Co. v. Dunton*, 213 Ga. App. 148, 444 S.E.2d 123 (1994).

Cited in *Commercial Union Ins. Co. v. Insurance Co. of N. Am.*, 155 Ga. App. 786, 273 S.E.2d 24 (1980); *Hall v. Regal Ins. Co.*, 202 Ga. App. 511, 414 S.E.2d 669 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Owner permitting another to drive. — Ga. L. 1951, p. 565 does not mean that when an owner gives permission to another to drive the owner's vehicle the owner assumes all the consequences of the driver's acts; such an interpretation would

render without meaning the phrase relating to "permission, express or implied," for there must be some point when permission to drive an automobile ceases being express or implied. 1969 Op. Att'y Gen. No. 69-40.

RESEARCH REFERENCES

ALR. — Liability of insurer, under compulsory statutory vehicle liability policy, to injured third persons, notwithstanding insured's failure to comply with policy

conditions, as measured by policy limits or by limits of financial responsibility act, 29 ALR2d 817.

40-9-35. Agreements for payment of damages.

(a) Any two or more of the persons involved in or affected by an accident may enter into a written agreement for the payment of an agreed amount with respect to all claims of any of such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the department.

(b) The department, to the extent provided by any such written agreement filed with it, shall not require the deposit of security and shall terminate any prior order of suspension or, if security has previously been deposited, the department shall immediately return such security to the depositor or his personal representative. (Ga. L. 1951, p. 565, § 6; Code 1933, § 68C-305, enacted by Ga. L. 1977, p. 1014, § 1.)

40-9-36. Amount of security; designation of persons for whom deposit made; reduction or increase in amount.

(a) The security under this chapter shall be in such amount as the department may require, but in no case in excess of the limits specified in subsection (a) of Code Section 40-9-37. Every depositor of security shall designate in writing every person on whose behalf the deposit is made and may at any time change such designation, in writing, to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

(b) The department may, upon written notice to all parties involved, reduce or increase the amount of security ordered in any case within six months after the date of the accident if in its judgment the amount ordered is excessive or inadequate. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative. (Ga. L. 1951, p. 565, § 9; Ga. L. 1956, p. 543, § 17; Ga. L. 1963, p. 593, § 6; Code 1933, § 68C-307, enacted by Ga. L. 1977, p. 1014, § 1.)

JUDICIAL DECISIONS

Cited in Fox v. Stanish, 150 Ga. App. 537, 258 S.E.2d 190 (1979); Commercial Union Ins. Co. v. Insurance Co. of N. Am., 155 Ga. App. 786, 273 S.E.2d 24 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, § 28. 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 167, 168. **C.J.S.** — 60 C.J.S., Motor Vehicles, § 286 et seq.

40-9-37. Requirements for liability insurance policies; erroneous information as to insurance.

(a) No liability insurance policy shall be effective under Code Section 40-9-34 unless issued by an insurance company authorized to do business in this state, except as provided in subsection (b) of this Code section, and unless such policy or bond is subject to limits, exclusive of

interest and costs, of not less than the amounts specified in subparagraph (a)(1)(A) of Code Section 33-7-11.

(b) No policy shall be effective under Code Section 40-9-34 with respect to any vehicle which was not registered in this state or which was registered elsewhere than in this state at the effective date of the policy or the most recent renewal thereof unless the insurance company issuing such policy is authorized to do business in this state, or if such company is not authorized to do business in this state, unless it shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon such policy arising out of such accident.

(c) Whenever erroneous information is given to the department with respect to the matters set forth in paragraph (1), (2), or (3) of Code Section 40-9-34, the department shall take appropriate action as provided in Code Section 40-9-32 after receipt of correct information with respect to such matters. (Ga. L. 1951, p. 565, §§ 5, 9; Ga. L. 1956, p. 543, § 10; Ga. L. 1957, p. 124, §§ 1, 5; Ga. L. 1958, p. 694, §§ 1, 5; Ga. L. 1964, p. 225, § 5; Code 1933, § 68C-307, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1982, p. 1751, § 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 938, § 3; Ga. L. 2000, p. 1516, § 3.)

Cross references. — Amount of insurance coverage required as prerequisite to operation of motor vehicle, § 33-34-4.

Editor's notes. — Ga. L. 1982, p. 1751, § 2, effective July 1, 1982, amended former Code 1933, § 68C-307, the basis for this Code section. Since the 1982 Act did not specifically amend this Code section,

and since the Code of Georgia of 1933, as amended, stood repealed on November 1, 1982 (see Code Section 1-1-10(a)(1)), no effect could be given to the 1982 amendment after that date. The provisions of the 1982 Act were reenacted in substantially similar form as an amendment to this Code section by Ga. L. 1983, p. 3, § 29.

JUDICIAL DECISIONS

Clause exempting company from liability if insured avoided arrest. — Clause in an automobile liability policy exempting insurance company from liability if the automobile is involved in an accident occurring while insured is attempting to avoid apprehension or arrest is void as against public policy, but only to the extent of insurance required by the compulsory insurance law at the time of the collision. *Cotton States Mut. Ins. Co. v. Neese*, 254 Ga. 335, 329 S.E.2d 136 (1985).

Ga. L. 1951, p. 565 did not require total coverage for any damages that may be imposed by law to any class of persons. *Fitzgerald v. Universal Under-*

writers Ins. Co., 132 Ga. App. 610, 208 S.E.2d 619 (1974).

Named driver exclusion upheld. — No language in O.C.G.A. § 40-9-37 prohibited named driver exclusion disallowing coverage for insured's spouse, nor was the contested provision violative of public policy, such that the trial court's conclusion that provision was unenforceable was erroneous. *Progressive Preferred Ins. Co. v. Browner*, 209 Ga. App. 544, 433 S.E.2d 401 (1993).

"Business use" exclusion void. — Automobile policy exclusion for the insured using a vehicle "while employed or otherwise engaged in any business" was void as against public policy to the extent

of the mandatory monetary requirements in effect at the time of the collision. *Federated Mut. Ins. Co. v. Dunton*, 213 Ga. App. 148, 444 S.E.2d 123 (1994).

Rental cars. — Even though a car rental agreement stated that coverage limits were those imposed by the state financial responsibility law where the accident occurs, the rental company could not claim entitlement to such limits when the company failed to comply with the requirements that the company's limita-

tions of coverage be specified in the company's self-insurance plan filed with the commissioner of insurance. *Ryan v. Boyd*, 911 F. Supp. 524 (M.D. Ga. 1996).

Cited in *Standard Guar. Ins. Co. v. Davis*, 145 Ga. App. 147, 243 S.E.2d 531 (1978); *Fox v. Stanish*, 150 Ga. App. 537, 258 S.E.2d 190 (1979); *Commercial Union Ins. Co. v. Insurance Co. of N. Am.*, 155 Ga. App. 786, 273 S.E.2d 24 (1980); *In re Whipple*, 138 Bankr. 137 (Bankr. S.D. Ga. 1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, *Automobile Insurance*, § 25 et seq.

ALR. — *Automobile liability insurance*, 13 ALR 135; 19 ALR 879; 23 ALR 1472; 28 ALR 1301; 41 ALR 507.

Automobile insurance: policy obtained by mortgagee or conditional vendor of car as other or additional insurance within clause against such insurance in policy obtained by mortgagor or conditional vendee and vice versa, 76 ALR 1174.

Insurance covering damage to automobile by accident or collision, 105 ALR 1426.

Policy provision extending coverage to comply with financial responsibility act as applicable to insured's first accident, 8 ALR3d 388.

Automobile liability insurance: what

are accidents or injuries "arising out of ownership, maintenance, or use" of insured vehicle, 15 ALR4th 10.

Combining or "stacking" uninsured motorist coverages provided in policies issued by different insurers to same insured, 21 ALR4th 211.

Automobile liability insurance policy flight from police exclusion: validity and effect, 49 ALR4th 325.

What constitutes "entering" or "alighting from" vehicle within meaning of insurance policy, or statute mandating insurance coverage, 59 ALR4th 149.

What constitutes single accident or occurrence within liability policy limiting insurer's liability to specified amount per accident or occurrence, 64 ALR4th 668.

40-9-38. Surety bonds and real property bonds as security; requirements; cancellations; liens; actions on bonds; reduction or increase of security; erroneous information.

(a) Security under this chapter may also be provided for by a surety bond executed by the person and by a surety company duly authorized to transact business in this state or by the person giving proof of his ownership of real property and by one or more individual sureties owning real property within this state and having an equity therein in at least the amount of the bond. The commissioner may not accept any real property bond unless the real property is scheduled in an affidavit attached thereto setting forth a description of such property and the title thereto, including any liens and encumbrances and amounts thereof, market value and value of such sureties' interest therein, executed by the owner or owners of such interest, and such bond and affidavit shows thereon that a duplicate original of such bond and

affidavit has been recorded in the office of the clerk of the superior court where deeds are admitted to record in the county where the real property is located. The clerk shall provide a separate book for such purpose. The bond shall be approved by the clerk in the same manner as a supersedeas bond is approved. The fee of the clerk for recording and approving such affidavit and bond shall be \$2.50.

(b) The commissioner shall not accept any such bond unless it is conditioned for payments in amounts requested by the commissioner, subject to the maximum amounts of security as specified under this chapter.

(c) No such bond shall be canceled unless 20 days' prior written notice of cancellation is given the commissioner, and cancellation of the bond shall not prevent recovery thereon with respect to any cause of action which necessitated the filing of such bond.

(d) A bond with individual sureties shall constitute a lien upon the real property of the principal and any individual surety in favor of the Governor of Georgia for the use of any holder of any final judgment arising out of the cause of action which necessitated the filing of the bond, against the principal on account of damage to property or injury to or death of any person or persons, upon the recording of the bond in the office of the clerk of the court where deeds are admitted to record in the county where the real property is located.

(e) When a bond with individual sureties filed with the commissioner is no longer required under this chapter, the commissioner shall, upon request, cancel it as to liability for damage to property or injury to or death of any person or persons; and, when a bond has been canceled by the commissioner, he shall, upon request, furnish a certificate of cancellation with the seal of the department thereon. The certificate, notwithstanding any other provision of law, may be recorded in the office of the clerk of the court in which the bond was admitted to record.

(f) When the certificate of cancellation with the seal of the department thereon has been filed in the office of the clerk of the superior court in which the bond was admitted to record, and when there are no claims or judgments against the principal in the bond on account of damage to property or injury to or death of any person or persons resulting from the ownership or operation of a motor vehicle by the principal arising out of the cause of action which necessitated the filing of the bond, the clerk of the superior court of the county in which the bond was admitted to record shall thereupon record the certificate of cancellation, which shall discharge the lien of the bond on the real property of the sureties. The cost of such recording shall be upon such sureties.

(g) If a final judgment rendered against the principal on the bond filed with the commissioner is not satisfied within 30 days after its

rendition, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action on the bond in the name of the state against the company or persons issuing the bond.

(h) When the sureties on the bond are individuals, the judgment creditor may proceed against any or all parties to the bond at law for a judgment or in equity for a decree and foreclosure of the lien on the real property of the sureties. The proceeding whether at law or in equity may be against one, all, or any intermediate number of parties to the bond; and, when less than all are joined, another or others may be impleaded in the same proceeding; and, after final judgment or decree, other proceedings may be instituted until full satisfaction is obtained.

(i) The department may, upon written notice to all parties involved, reduce or increase the amount of security ordered in any case within six months after the date of the accident if in its judgment the amount ordered is excessive or inadequate. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative.

(j) Whenever erroneous information is given the department with respect to the matters set forth in paragraph (1), (2), or (3) of Code Section 40-9-34, the department shall take appropriate action as provided in Code Section 40-9-32 after receipt of correct information with respect to such matters. (Ga. L. 1951, p. 565, §§ 5, 9; Ga. L. 1956, p. 543, § 12; Ga. L. 1959, p. 341, § 1; Code 1933, § 68C-307.1, enacted by Ga. L. 1978, p. 1527, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 14, § 40.)

40-9-39. Custody, disposition, and return of deposit.

(a) The department shall place any security deposited with it under this chapter in the general fund of the state treasury. Such security shall be applicable and available only:

(1) For the payment of any settlement agreement covering any claim arising out of the accident upon instruction of the person who made the deposit; or

(2) For the payment of a judgment or judgments for damages arising out of the accident rendered against the person required to make the deposit in an action at law begun not later than one year after the deposit of such security or within one year after the date of deposit of any security following failure to make payments under an agreement to pay.

(b) Upon the expiration of one year from the date of any deposit of security, any security remaining on deposit shall be returned to the

person who made such deposit or to his legal representative, if evidence satisfactory to the department has been filed with it:

(1) That no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made; and

(2) That there does not exist any unpaid judgment rendered against any such person in any such action.

In any case where the depositor shall die while security is on deposit with the department, the commissioner is authorized to return such security to the executor or administrator of the estate of the deceased depositor, or, if there is no executor or administrator and the amount on deposit is \$1,000.00 or less, the commissioner is authorized to pay over such deposit to the surviving spouse or heirs at law of the deceased depositor. In any event, no deposit shall be returned unless and until satisfactory evidence has been filed by the person seeking such return, under the same conditions as provided in paragraph (1) of this subsection for the filing of such evidence by the depositor.

(c) In any case where, after the expiration of one year from the date of any deposit of security, the commissioner is unable to contact the depositor by mail or receives no response from the depositor, the commissioner shall have a notice printed in the local newspaper in which legal notices are usually printed, in the county of the last known address of the depositor, once each week for four consecutive weeks. Such notice shall specify that the depositor is eligible for the return of the security subject to the provisions of this Code section and shall further specify that, if no response is received from the notice within one year from the date on which the last notice is printed, the security will be deposited in the general fund of the state treasury. If no response to the notice is received by the commissioner, the commissioner shall dispose of the security as provided in this subsection. The cost of the publication shall be deducted from the security on deposit, regardless of whether the security is returned to the depositor or his legal representative or deposited in the state treasury. After such security is deposited in the general fund of the state treasury, the state treasurer is authorized to return such security to the proper person as provided in this Code section as a refund, in the event proof is furnished to the commissioner that such person is the proper person to whom such security should be refunded. The state treasurer shall make no such refund without a certification by the commissioner of the name of the person to whom the refund should be made.

(d) Upon receiving a certificate from the clerk of any court wherein a judgment has been obtained against the person in whose behalf the deposit was made, which certificate shall set forth the parties to the

litigation, the time, place, and date of the accident, and the fact that the judgment is unsatisfied of record and that the time for appeal has expired, it shall be the duty of the commissioner to transmit immediately to the clerk of such court any cash security held by the department, to be applied to the satisfaction of the judgment and any accrued interest and court costs. Any additional security over and above the amount required to satisfy the foregoing shall be returned by the department to the depositor. (Ga. L. 1951, p. 565, § 10; Ga. L. 1956, p. 543, § 18; Ga. L. 1963, p. 593, § 7; Ga. L. 1965, p. 456, § 1; Ga. L. 1969, p. 819, § 4; Ga. L. 1971, p. 654, § 1; Ga. L. 1972, p. 412, § 1; Code 1933, § 68C-308, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “paragraph (1)” was substituted for “the first paragraph” in the last sentence of subsec-

tion (b), and “contact” was substituted for “contract” in the first sentence of subsection (c).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 286 et seq.

40-9-40. Check of court records for pending action or unsatisfied judgment; certificate of clerk.

At the end of the expiration of one year from the date of the accident or one year from the date of the suspension under this chapter, the clerk, or the judge if there is no clerk, of any court of this state having jurisdiction over civil cases shall, upon request of an operator or owner or an authorized representative of either, check the records of such court and furnish such operator or owner or authorized representative with a certificate showing whether or not there is an action at law pending or an unsatisfied judgment on file against such operator or owner arising out of the accident which necessitated the depositing of security or on which the suspension was based. The fee for providing such certificate shall be as provided in Code Section 15-6-77 and shall be paid by the party requesting the certificate. (Ga. L. 1951, p. 565, § 3; Ga. L. 1956, p. 543, §§ 7, 14; Code 1933, § 68C-309, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1981, p. 1396, § 7; Ga. L. 1991, p. 1324, § 7.)

40-9-41. Matters not to be evidence in civil actions for damages.

Neither any accident report filed with the Department of Transportation, the action taken by the Department of Driver Services pursuant to this chapter, the findings, if any, of the department upon which such action is based, nor the security filed as provided in this chapter shall be referred to in any way, nor shall they be any evidence of the

negligence or due care of either party, at the trial of any action at law to recover damages. (Ga. L. 1951, p. 565, § 11; Code 1933, § 68C-310, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 2005, p. 334, § 20-3/HB 501.)

JUDICIAL DECISIONS

Diagram prepared by investigating police officer admissible. — In a negligence action arising out of a motor vehicle collision, a diagram prepared by the investigating police officer as part of the offi-

cer's report, but not filed with the department, was properly admitted. *Pryor v. Phillips*, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

ARTICLE 3

UNSATISFIED JUDGMENTS

Cross references. — Verdict and judgment generally, T. 9, C. 12.

RESEARCH REFERENCES

ALR. — Validity and application of statute or regulation authorizing revocation or suspension of driver's license for

reason unrelated to use of, or ability to operate, motor vehicle, 18 ALR5th 542.

40-9-60. Courts to report unpaid judgments to department; department to report judgments against nonresidents.

(a) Whenever any person fails within 30 days to satisfy any judgment rendered in an action at law arising out of a motor vehicle accident, to which no appeal has been entered or motion for a new trial entered, then upon the request of the judgment creditor or his attorney it shall be the duty of the court in which such judgment is rendered within this state to forward to the department immediately after the expiration of said 30 days a certified copy of such judgment. The court shall be entitled to a fee as required by paragraphs (4) and (5) of subsection (g) of Code Section 15-6-77. In the event a certificate of pending or unsatisfied judgment is requested, the court shall be entitled to a fee as required by paragraph (8) of subsection (g) of Code Section 15-6-77.

(b) If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident. (Ga. L. 1956, p. 543, § 13; Code 1933, § 68C-401, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1981, p. 1396, § 8; Ga. L. 1992, p. 6, § 40.)

JUDICIAL DECISIONS

Constitutionality. — There is no constitutional violation because judgment creditor alone decides whether to seek remedy under Ga. L. 1977, p. 1014, § 1

(see O.C.G.A. § 40-9-60). *Keenan v. Hardison*, 245 Ga. 599, 266 S.E.2d 205 (1980).

40-9-61. Suspension of driver's license or operating privilege for nonpayment of judgment.

(a) The department, upon receipt of a certified copy of an unsatisfied judgment, shall suspend the driver's license or nonresident's operating privilege of the person against whom such judgment was rendered except as provided in subsections (b) and (c) of this Code section.

(b) If the judgment creditor consents, in writing, in such form as the department may prescribe, the department, in its discretion, may allow the judgment debtor to retain his or her license or nonresident's operating privilege for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment or of any installments as provided in Code Section 40-9-63.

(c) The department shall take no action pursuant to subsection (a) of this Code section if it shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this article, but has not paid such judgment for any reason. Such finding shall not be binding upon such insurer and shall have no legal effect whatever except for the purposes of administering this Code section. Whenever, in any judicial proceedings, it shall be determined by any final judgment, decree, or order that an insurer is not obligated to pay any such judgment, the department, notwithstanding any contrary finding theretofore made by it, shall forthwith suspend the license or nonresident's operating privilege of any person against whom such judgment was rendered. (Ga. L. 1956, p. 543, § 13; Code 1933, § 68C-402, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 2005, p. 334, § 20-4/HB 501.)

JUDICIAL DECISIONS

Section constitutional. — Since a party has only a qualified right and not a vested right in a driver's license, the revocation of the party's license under Ga. L. 1977, p. 1014, § 1 (see O.C.G.A. § 40-9-61) cannot violate the prohibition against passage of retroactive statutes. *Keenan v. Hardison*, 245 Ga. 599, 266 S.E.2d 205 (1980).

There is no equal protection violation

resulting from the fact that the judgment creditor alone has discretion whether or not to seek the remedy imposed by Ga. L. 1977, p. 1014, § 1 (see O.C.G.A. § 40-9-61). *Keenan v. Hardison*, 245 Ga. 599, 266 S.E.2d 205 (1980).

Nature of punishment. — Suspension of a driver's license under Ga. L. 1977, p. 1014, § 1 (see O.C.G.A. § 40-9-61) cannot be considered a criminal punishment.

Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980).

When the evidence was sufficient to support the Department of Public Safety's decision to suspend a license, the superior

court, sitting as an appellate court, erred in reversing the suspension. Miles v. Andress, 229 Ga. App. 86, 493 S.E.2d 233 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 171.

C.J.S. — 60 C.J.S., Motor Vehicles, § 387 et seq.

40-9-62. Duration of suspension; when judgments deemed satisfied.

(a) A driver's license or nonresident's operating privilege suspended pursuant to Code Section 40-9-61 shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of the judgment debtor, whether or not he or she was previously licensed, unless and until every such judgment is stayed, or satisfied in full or to the extent provided in subsection (b) of this Code section, subject to the exceptions provided in this article.

(b) Judgment referred to in this article, which is based upon an accident which occurred on or after January 1, 2001, shall, for the purpose of this chapter only, be deemed satisfied:

(1) When \$25,000.00 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(2) When, subject to such limit of \$25,000.00 because of bodily injury to or death of one person, \$50,000.00 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When \$25,000.00 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(c) Reserved.

(d) Payments made in settlement of any claims because of bodily injury, death, or property damage arising from the accident shall be credited in reduction of the amounts provided for in this Code section. (Ga. L. 1956, p. 543, § 13; Ga. L. 1957, p. 124, §§ 2, 3; Ga. L. 1958, p. 694, § 2; Code 1933, § 68C-403, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1983, p. 938, § 4; Ga. L. 1984, p. 22, § 40; Ga. L. 2000, p. 1516, § 4; Ga. L. 2005, p. 334, § 20-4/HB 501.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 171.

40-9-63. Installment payment of judgments.

(a) A judgment debtor, upon due notice to the judgment creditor, may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments, and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The department shall not suspend a license or nonresident's operating privilege and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor obtains such an order permitting the payment of any such judgment in installments, and while the payment of any such installments is not in default. (Ga. L. 1956, p. 543, § 13; Code 1933, § 68C-404, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 2005, p. 334, § 20-4/HB 501.)

ARTICLE 4

**GIVING PROOF OF FINANCIAL RESPONSIBILITY
FOR THE FUTURE**

Cross references. — Maintenance of proof of present and future minimum motor vehicle insurance coverage upon restoration of license prior to expiration of period of suspension, § 40-5-63.

RESEARCH REFERENCES

ALR. — Validity of Motor Vehicle Financial Responsibility Act, 35 ALR2d 1011.

Application of financial responsibility or compulsory insurance laws to governmental vehicles or their operators, 87 ALR2d 1224.

Automobile liability insurance: operator's policies, 88 ALR2d 995.

Omnibus clause as extending automobile liability coverage to third person us-

ing car with consent of permittee of named insured, 21 ALR4th 1146.

Validity and construction of automobile insurance provision or statute automatically terminating coverage when insured obtains another policy providing similar coverage, 61 ALR4th 1130.

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, 2 ALR5th 725.

40-9-80. Methods of giving proof; duration.

(a) In all those situations under this chapter in which proof of financial responsibility for the future is required, such proof may be given by filing with the department:

(1) A written certificate of any insurance carrier certifying that there is in effect a liability policy as to that vehicle meeting the requirements of subsections (a) and (b) of Code Section 40-9-37; or

(2) A plan of self-insurance, accepted by the commissioner, as provided in Code Section 33-34-5.1.

(b) Such proof must be maintained for a one-year period. (Ga. L. 1964, p. 225, § 6; Ga. L. 1969, p. 819, § 7; Code 1933, § 68C-501, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2000, p. 1246, § 17.)

40-9-81. Proof required upon restoration of driver's license suspended for certain offenses.

(a) Whenever any person is convicted of any offense making mandatory the suspension of such person's driver's license, the department shall not restore the license to such person until permitted under the motor vehicle laws of this state, and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future.

(b) If such person does not have the required proof at any time during the one-year period following the date of restoration of his driver's license, the department shall immediately revoke the license. (Ga. L. 1951, p. 565, § 7A; Ga. L. 1956, p. 543, § 15; Ga. L. 1957, p. 124, § 4; Ga. L. 1958, p. 694, § 3; Ga. L. 1963, p. 593, § 8; Ga. L. 1964, p. 225, § 3; Ga. L. 1971, p. 249, § 1; Code 1933, § 68C-502, enacted by Ga. L. 1977, p. 1014, § 1.)

Cross references. — Offenses giving rise to mandatory suspension of driver's license, § 40-5-54. Factors governing restoration of drivers' licenses generally, § 40-5-62.

JUDICIAL DECISIONS

Purpose of section. — Object of Ga. L. 1951, p. 565, which gave to the trial judge the right to suspend the license of a driver convicted of driving while intoxicated, was to provide for the suspension of the license as part of the punishment for the violation of the law, while Ga. L. 1951, p. 565 has for its purpose requiring the qualification of the licensee as a self-insurer, or the

giving of a liability insurance policy or a surety bond, for the protection of the public from any loss or damage during a period of three years; one deals with the revocation of a privilege, and the other with a suspension of the privilege as a part of the punishment for violating the law. *Murphy v. Dominy*, 211 Ga. 70, 84 S.E.2d 193 (1954).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 172 et seq.

ALR. — Automobile liability insurance, 13 ALR 135; 19 ALR 879; 23 ALR 1472; 28 ALR 1301; 41 ALR 507.

40-9-82. Cancellation of insurance certificate.

Any insurance company filing a certification with the department in order for the operator to show the proof required in this article shall not cancel such certification within 12 months from its effective date except for a subsequent conviction of any offense requiring the mandatory suspension of such operator's license, and the department shall be given at least 20 days' prior written notice of such cancellation. The commissioner may, in his discretion, permit the cancellation of such certificate for other cause made known to and approved by him. (Code 1933, § 68C-502, enacted by Ga. L. 1977, p. 1014, § 1.)

ARTICLE 5

**ASSIGNED RISK PLANS, "SPOT" INSURANCE, AND
COOPERATION BY INSURED**

Cross references. — Motor vehicle accident insurance generally, T. 33, C. 34.

Administrative rules and regulations. — Property and casualty section, Official Compilation of the Rules and Regulations of the State of Georgia, Comptrol-

ler General, Rules of Comptroller General Office of Commissioner of Insurance, Rule 120-2-1-.06.

Law reviews. — For survey article on insurance, see 34 Mercer L. Rev. 177 (1982).

JUDICIAL DECISIONS

Cited in State Farm Mut. Auto. Ins. Co. v. Cone, 165 Ga. App. 766, 302 S.E.2d 620 (1983).

RESEARCH REFERENCES

ALR. — Validity of Motor Vehicle Financial Responsibility Act, 35 ALR2d 1011.

Automobile liability insurance: operator's policies, 88 ALR2d 995.

Cancellation of compulsory or "financial

responsibility" automobile insurance, 44 ALR4th 13.

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, 2 ALR5th 725.

40-9-100. Assigned risk plan.

(a) After consultation with insurance companies authorized to issue automobile policies in this state, the Commissioner of Insurance shall approve a reasonable plan or plans for the equitable apportionment among such companies of applicants for motor vehicle liability policies

and other automobile policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein.

(b) Any applicant for a policy to be issued under any such plan, any person insured under any such plan, and any insurance company affected may appeal to the Commissioner of Insurance from any ruling or decision of the manager or committee designated to operate such plan. Any person aggrieved by any order or act of the Commissioner of Insurance under this Code section may, within ten days after notice of such order or act, file a petition in the superior court of the county of his residence for a review thereof. The court will summarily hear his petition and may make any appropriate order or decree.

(c) A person who has committed no traffic offenses for the prior three years and has had no claims based on fault against an insurer for the prior three years shall not be eligible for a policy to be issued under the plan created by this Code section unless such person's application or the subsequent investigation on the application discloses reasons for which the person would not be able to procure a policy through ordinary methods. (Ga. L. 1951, p. 565, § 17; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-601, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1990, p. 738, § 1; Ga. L. 1994, p. 97, § 40.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "Commissioner of Insurance" was substituted for

"Insurance Commissioner" in the second sentence in subsection (b).

JUDICIAL DECISIONS

Legislative intent. — Enactment of assigned risk plan found in O.C.G.A. § 40-9-100 indicates a determination by the General Assembly that an innocent party should not bear the loss. *Young v. Allstate Ins. Co.*, 248 Ga. 350, 282 S.E.2d 115 (1981).

Maximum bodily injury limit. — Policy issued pursuant to the plan can provide a maximum bodily injury liability limit of \$100,000 per person. *Schwartz v. Black*, 200 Ga. App. 735, 409 S.E.2d 681, cert. denied, 200 Ga. App. 897, 409 S.E.2d 681 (1991).

Limit in plan prevails over general law principles. — Since the plan itself provides a maximum bodily injury liability limit of \$100,000, reliance upon principles of general contract and insurance law to assert a greater limit in the instant case is unavailing. *Schwartz v. Black*, 200

Ga. App. 735, 409 S.E.2d 681, cert. denied, 200 Ga. App. 897, 409 S.E.2d 681 (1991).

Failure of insured to notify insurer of lawsuit against the insured does not constitute defense to insurer's liability. This is true even though the insurance has been extended by the insurer under the assigned risk plan set out in O.C.G.A. § 40-9-100. *Young v. Allstate Ins. Co.*, 248 Ga. 350, 282 S.E.2d 115 (1981).

Insured's failure to comply with the notice provisions of a policy of automobile insurance issued pursuant to Georgia's assigned risk plan would not operate to defeat recourse to the policy by a third party when the insurer received prompt and adequate notice of the pendency of litigation, and there was no suggestion that the insurer's ability to defend had been prejudiced in any way by the failure of the insured to provide the insurer with

40-9-100 REPORTING ACCIDENTS; PROOF OF FINANCIAL RESP. 40-9-102

prior notice of an accident. *Starnes v. Cotton States Mut. Ins. Co.*, 194 Ga. App. 320, 390 S.E.2d 419, aff'd, 260 Ga. 235, 392 S.E.2d 3 (1990).

Cited in *Allstate Ins. Co. v. Young*, 638 F.2d 31 (5th Cir. 1981); *Georgia Farm Bureau Mut. Ins. Co. v. Coffman*, 169 Ga. App. 192, 311 S.E.2d 854 (1983); *National Indem. Co. v. Smith*, 172 Ga. App. 415, 323

S.E.2d 274 (1984); *Allstate Ins. Co. v. O'Brien*, 172 Ga. App. 693, 324 S.E.2d 498 (1984); *Berryhill v. State Farm Fire & Cas. Co.*, 174 Ga. App. 97, 329 S.E.2d 189 (1985); *Moore v. Georgia Cas. & Sur. Co.*, 179 Ga. App. 247, 345 S.E.2d 894 (1986); *State Farm Mut. Auto. Ins. Co. v. Hamilton*, 213 Ga. App. 384, 444 S.E.2d 414 (1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, §§ 26, 59.

ALR. — Automobile liability insurance, 13 ALR 135; 19 ALR 879; 23 ALR 1472; 28 ALR 1301; 41 ALR 507.

Cancellation of compulsory or "financial responsibility" automobile insurance, 44 ALR4th 13.

40-9-101. Reserved.

Editor's notes. — Ga. L. 2000, p. 1246, §§ 15, 16, effective July 1, 2000, amended and then redesignated the former provisions of this Code section, relating to self-insurers, as Code Section 33-34-5.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, this Code section designation was reserved.

40-9-102. Insurance for person renting U-drive-it vehicle.

Any person who rents motor vehicles from a U-drive-it owner is required to provide his own insurance, and insurance companies authorized to issue automobile policies in this state shall be required by the Commissioner of Insurance to provide "spot" insurance, which shall be purchased by such person before the U-drive-it owner shall be authorized to turn a motor vehicle over to such person. If a U-drive-it owner turns over any motor vehicle to any person without first ascertaining that such "spot" insurance has been obtained, the U-drive-it owner shall not, as to that particular rental transaction, be exempted from the provisions of this chapter as provided in Code Section 40-9-4. (Ga. L. 1951, p. 565, § 23; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-604, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1994, p. 97, § 40.)

Law reviews. — For annual survey article discussing developments in insurance law, see 51 Mercer L. Rev. 313 (1999).

JUDICIAL DECISIONS

Purpose of section. — Car rental agency's failure to verify a renting driver was insured did not constitute negligence

per se so as to make the agency liable in an action against the agency by occupants of a vehicle who were injured in a collision

involving a vehicle rented from the agency. O.C.G.A. § 40-9-102 was not designed to prevent the collision which caused the plaintiffs' injuries, but, rather, the statute's purpose is to assure that such tortfeasors are not uninsured. *Rabinovitz v. Accent Rent-A-Car, Inc.*, 213 Ga. App. 786, 446 S.E.2d 244 (1994); *Alamo Rent-A-Car, Inc. v. Hamilton*, 216 Ga. App. 659, 455 S.E.2d 366 (1995).

O.C.G.A. § 40-9-102 requires that a person who rents from a U-drive-it owner must provide insurance for the vehicle either through a vehicle insurance policy the renter already holds for the renter's own vehicle that covers the renter while driving another car or by purchasing at the time of rental an insurance policy that covers the specific rental vehicle. *Atlanta Rent-A-Car, Inc. v. Jackson*, 204 Ga. App. 448, 419 S.E.2d 489, cert. denied, 204 Ga. App. 921, 419 S.E.2d 489 (1992).

Co-operators not subject to statute. — Clear language of O.C.G.A. § 40-9-102 addresses itself to the renter of the vehicle, not the operator, authorized or not, inasmuch as the relationship with the rental agency is a matter of contract; thus, an authorized co-operator of a vehicle, who is not deemed a co-renter by the contract, is not subject to the statute. *A. Atlanta Autosave, Inc. v. Generali - U.S. Branch*, 270 Ga. 757, 514 S.E.2d 651 (1999).

Liability insurance for injury to third parties. — Language in an automobile rental agreement stating that the lessor "furnishes no insurance whatsoever to the renter" did not exempt the lessor from providing liability insurance for injury to third parties. *Jones v. Wortham*, 201 Ga. App. 668, 411 S.E.2d 716, cert. denied, 201 Ga. App. 904, 411 S.E.2d 716 (1991).

O.C.G.A. § 40-9-102, which provides that lessees from U-drive-it agencies furnish their own insurance, does not completely exempt the agencies from their duty to procure liability insurance as owners of vehicles pursuant to the insurance law. *Jones v. Wortham*, 201 Ga. App. 668, 411 S.E.2d 716, cert. denied, 201 Ga. App. 904, 411 S.E.2d 716 (1991).

Car rental company was properly granted summary judgment in a suit by

the children and estate of a decedent who was injured and died as a result of a collision with a rented vehicle as the company's violation of O.C.G.A. § 40-9-102 by failing to require the lessee of the vehicle to have "spot" liability insurance was not the proximate cause of the collision which caused the decedent's injuries and death, and, therefore, the company, which had the company's own liability insurance covering the vehicle, was not personally liable for the decedent's injuries and death. *Scott v. Joe Thomson Auto Rental & Leasing, Inc.*, 257 Ga. App. 453, 571 S.E.2d 475 (2002).

Liability when driver not party to contract. — Driver of rented automobile, who was listed as an additional driver but not as an additional renter and who did not sign or cosign the rental agreement, was not a party to the agreement; therefore, the driver's insurance provider was not liable for costs arising out of an accident. *A. Atlanta AutoSave, Inc. v. Generali - U.S. Branch*, 230 Ga. App. 887, 498 S.E.2d 278 (1998).

Operator's insurance policy deemed primary. — Operator's insurance was primary and the owner's insurance afforded excess coverage, if any, in the case of a rental car, even though the operator's policy contained an "excess insurance" clause which stated that any liability insurance provided by the company for a vehicle not owned by the insured should be excess of any other collectible insurance. *Jones v. Wortham*, 201 Ga. App. 668, 411 S.E.2d 716, cert. denied, 201 Ga. App. 904, 411 S.E.2d 716 (1991).

Under O.C.G.A. § 40-9-102, U-drive-it car rental companies are not exempt from the companies' duty under O.C.G.A. § 33-34-4 to insure cars the companies own, but the companies enjoy special treatment in terms of priority of coverage on cars rented to the public, and the renter's liability insurance coverage provided primary liability coverage for loss caused by a driver of a rental car. *Jordan v. Spirit Rent-A-Car*, 252 Ga. App. 117, 555 S.E.2d 734 (2001).

Company's employee who rented the vehicle from the vehicle owner was insured under the insurance policy that the vehicle owner had with the insurer on

which the vehicle owner was listed as an additional insured, and, thus, under Georgia statutory law, the renter's insurance provided the primary insurance coverage and the vehicle owner provided the secondary coverage after the company's employee injured the victim in a collision unless it was shown that the parties contracted to reverse the order of priority; since no such contract was shown, the insurer's coverage was the primary insurance coverage. *Zurich Am. Ins. Co. v. General Car & Truck Leasing Sys.*, 258 Ga. App. 733, 574 S.E.2d 914 (2002).

Lessee's insurance primary when lessor uninsured. — When automobile lessee's insurance had been canceled at the time the lessee rented the automobile, the lessor's insurance became primary insurance for purposes of accident coverage, notwithstanding facts that lessor's manager thought the manager had verified that lessee did have insurance, and that lessee was not the driver of the automobile at the time of the accident. *A. Atlanta AutoSave, Inc. v. Generali - U.S. Branch*, 230 Ga. App. 887, 498 S.E.2d 278 (1998).

Rental agency not required to offer insurance. — O.C.G.A. § 40-9-102 does not require the U-drive-it owner to offer insurance at the time of rental if the renter already has insurance to cover the rental vehicle. The notations on the face of the rental contract at issue demonstrate that the car rental agency ascertained that the renter had insurance coverage before renting the car to the renter, therefore, a car rental agency was not required to offer insurance to a renter or to require renter to purchase insurance to be eligible for the exemption afforded by O.C.G.A. § 40-9-102. *Atlanta Rent-A-Car, Inc. v. Jackson*, 204 Ga. App. 448, 419 S.E.2d

489, cert. denied, 204 Ga. App. 921, 419 S.E.2d 489 (1992).

Primary coverage provided by rental company. — When a rental company incorporated the company's own liability coverage as part of the company's rental agreement and failed to determine whether the renter maintained the renter's own liability coverage, the company's coverage had priority over the renter's policy. *Ryan v. Boyd*, 911 F. Supp. 524 (M.D. Ga. 1996).

Renter's insurance not primary in all instances. — O.C.G.A. § 40-9-102 does not mean that a renter and U-drive-it owner cannot, under any circumstances, contract between themselves for the owner's insurance to be primary. *General Car & Truck Leasing Sys. v. Woodruff*, 214 Ga. App. 200, 447 S.E.2d 97 (1994).

Lack of coverage by renter. — Car rental agency loses the statutory exemption provided by the statute when it is later determined that the renter did not have insurance coverage. *A. Atlanta Autosave, Inc. v. Generali - U.S. Branch*, 270 Ga. 757, 514 S.E.2d 651 (1999).

Application to dealers who loan cars to customers. — Unambiguous provisions of a used vehicle dealer's insurance policy provided that the dealer's customer, who had borrowed a car while the customer's car was repaired, was an insured under the policy but was only insured up to the compulsory legal limits of O.C.G.A. § 33-7-11. Because the car was not rented, the provisions of O.C.G.A. § 40-9-102 did not apply. *Grange Mut. Cas. Co. v. Fulcher*, 306 Ga. App. 109, 701 S.E.2d 547 (2010).

Cited in *Wausau Ins. Cos. v. Lightnin' Truck Rental, Inc.*, 194 Ga. App. 819, 392 S.E.2d 32 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, §§ 23, 25.

ALR. — State regulation of motor vehi-

cle rental ("you-drive") business, 60 ALR4th 784.

40-9-103. Cooperation by insured with insurer in connection with defense of action or threatened action under policy.

(a) No motor vehicle liability insurance policy covering a motor vehicle principally garaged or principally used in this state shall be issued, delivered or issued for delivery, or renewed in this state unless such policy contains provisions or has an endorsement thereto which specifically requires the insured to send his insurer, as soon as practicable after the receipt thereof, a copy of every summons or other process relating to the coverage under the policy and to cooperate otherwise with the insurer in connection with the defense of any action or threatened action covered under the policy.

(b)(1) Noncompliance by the insured with this required provision or endorsement shall constitute a breach of the insurance contract which, if prejudicial to the insurer, shall relieve the insurer of its obligation to defend its insureds under the policy and of any liability to pay any judgment or other sum on behalf of its insureds.

(2) In the event the insurer denies coverage and it is determined by declaratory judgment or other civil process that there is in fact coverage, the insurer shall be liable to the insured for legal costs and attorney's fees as may be awarded by the court.

(c) Subsections (a) and (b) of this Code section shall not operate to deny coverage for failure to send a copy of a summons or other process relating to policy coverage if such documents are sent by a third party to the insurer or to the insurer's agent by certified mail or statutory overnight delivery within ten days of the filing of such documents with the clerk of the court. If the name of the insurer or the insurer's agent is unknown, the third party shall have a period of 30 days from the date the insurer or agent becomes known in which to send these required documents. Such documents must be sent to the insurer or agent at least 30 days prior to the entry of any judgment against the insured. (Code 1933, § 68C-608, enacted by Ga. L. 1982, p. 1624, § 2; Code 1981, § 40-9-103, enacted by Ga. L. 1982, p. 1624, § 4; Ga. L. 1984, p. 22, § 40; Ga. L. 1989, p. 14, § 40; Ga. L. 2000, p. 1589, § 3.)

JUDICIAL DECISIONS

Additional insured's duty to cooperate. — O.C.G.A. § 40-9-103 protects the insurer from prejudicial actions of an additional insured because once the additional insured is covered by a policy, the contractual restrictions are as binding as the restrictions would be for any other

third-party beneficiary. *Cotton States Mut. Ins. Co. v. Starnes*, 260 Ga. 235, 392 S.E.2d 3 (1990).

Cited in *Georgia Mut. Ins. Co. v. Rollins, Inc.*, 209 Ga. App. 744, 434 S.E.2d 581 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Auto-mobile Insurance, § 372 et seq.

CHAPTER 10

FORMULATION AND COORDINATION OF STATE AND
LOCAL HIGHWAY SAFETY PROGRAMS

Sec.		Sec.	
40-10-1.	Short title.	40-10-7.	Specific authority and duties of Governor.
40-10-2.	Declaration of policy; general authority of Governor.	40-10-8.	Cooperation with other agencies.
40-10-3.	Definitions.	40-10-9.	Powers of local governing authorities.
40-10-4.	Director designated Governor's highway safety representative; appointment; responsibilities of office.	40-10-10.	Acceptance and administration of funds.
40-10-5.	Duties of director.		
40-10-6.	Office space; staff, supplies, and materials.		

Cross references. — Duties of law enforcement and school officials relating to traffic safety in vicinity of schools, § 20-2-1130.

Administrative rules and regula-

tions. — Highway safety grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Governor's Office of Highway Safety, Rule 279-1-.01.

40-10-1. Short title.

This chapter shall be known and may be cited as the "Highway Safety Coordination Act of 1967." (Ga. L. 1967, p. 708, § 1.)

40-10-2. Declaration of policy; general authority of Governor.

It is the public policy of this state in every way possible to reduce the number of traffic accidents, deaths, injuries, and property damage through the formulation of comprehensive highway safety programs. The Governor, as the chief executive and highest elected official of this state, is vested with the power and authority to act as the chief administrator in the formulation of such programs of highway safety. (Ga. L. 1967, p. 708, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 15, 16, 19, 23.

C.J.S. — 16 C.J.S., Constitutional Law, §§ 250 et seq., 354 et seq.

ALR. — Liability of public authority for injury arising out of automobile race con-

ducted on street or highway, 80 ALR3d 1192.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from failure to repair pothole in surface of highway or street, 98 ALR3d 101.

Liability, in motor vehicle-related cases, roadside parkway or parking strip, 98 of governmental entity for injury or death ALR3d 439. resulting from defect or obstruction on

40-10-3. Definitions.

As used in this chapter, the term:

(1) "Director" means the director of the Office of Highway Safety in the Department of Public Safety.

(2) "National Highway Safety Act of 1966" means the National Highway Safety Act of 1966, Pub. Law 89-564, 23 U.S.C. Section 401, et seq., and all amendments thereto.

(3) "Office" means the Office of Highway Safety in the Department of Public Safety. (Code 1981, § 40-10-3; Ga. L. 1985, p. 149, § 40; Ga. L. 1997, p. 143, § 40.)

Editor's notes. — This Code section 1981, Ex. Sess., p. 8 (Code Enactment was created as part of the Code enactment Act). and was thus enacted into law by Ga. L.

40-10-4. Director designated Governor's highway safety representative; appointment; responsibilities of office.

There is created within the executive department the Office of Highway Safety. The Office of Highway Safety is assigned to the Department of Public Safety for administrative purposes only as provided in Code Section 50-4-3. The director of the Office of Highway Safety is designated the Governor's highway safety representative and shall be appointed by the Governor and serve at his pleasure. The Office of Highway Safety is charged and empowered to carry out the responsibilities established by the National Highway Safety Act of 1966. (Ga. L. 1972, p. 1015, § 1605; Ga. L. 1973, p. 466, § 1.)

40-10-5. Duties of director.

The director shall advise with and assist the Governor in the formulation, coordination, and supervision of comprehensive state and local highway safety programs to reduce traffic accidents, deaths, injuries, and property damage within this state. The director, acting under the direction and supervision of the Governor, shall also advise with and assist the various departments and agencies of state government concerned with highway safety programs. He shall coordinate and review, cooperatively, the programs developed by the various local political subdivisions, for the purpose of assisting them in the preparation of their highway safety programs to ensure that they meet the criteria established for such programs by the appropriate state and federal authorities. (Ga. L. 1967, p. 708, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 19, 23, 25. 38 Am. Jur. 2d, Governor, § 5 et seq.

ALR. — Duty as regards barriers for protection of automobile travel, 173 ALR 626.

Highways: governmental duty to provide curve warnings or markings, 57 ALR4th 342.

40-10-6. Office space; staff, supplies, and materials.

The Governor is authorized to provide and designate for the use of the director such space as shall be necessary to quarter the director and his staff. The director is authorized to employ and secure the necessary staff, supplies, and materials to carry out this chapter, subject to the approval of the Governor. (Ga. L. 1967, p. 708, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 1.

40-10-7. Specific authority and duties of Governor.

Notwithstanding the provisions of Code Section 50-5-143, the Governor is authorized and granted the power to contract and to exercise any other powers which may be necessary in order to ensure that all departments of the state government and local political subdivisions participate to the fullest extent possible in the benefits available under the National Highway Safety Act of 1966 and similar federal programs of highway safety. The Governor shall formulate standards for highway safety programs for political subdivisions to assure that they meet the criteria of the National Highway Safety Agency and shall institute a reporting system for the local political subdivisions to report the status of their programs to the state. (Ga. L. 1967, p. 708, § 5; Ga. L. 2008, p. 589, § 2/HB 969.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 17, 18, 183 et seq. 38 Am. Jur. 2d, Governor, § 1.

40-10-8. Cooperation with other agencies.

The Governor, acting for and in behalf of the State of Georgia, is authorized to cooperate with, and participate in, the programs of all federal, state, local, public, and private agencies and organizations in

order to effectuate the purposes of this chapter. (Ga. L. 1967, p. 708, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 15 et seq., 183 et seq.

40-10-9. Powers of local governing authorities.

The governing authorities of the various counties and municipalities are empowered to contract with the state, federal, and other local public and private agencies and organizations and exercise other necessary powers to participate to the fullest extent possible in the highway safety programs of this state, the National Highway Safety Act of 1966, and similar federal programs of highway safety. (Ga. L. 1967, p. 708, § 7; Ga. L. 1985, p. 149, § 40.)

OPINIONS OF THE ATTORNEY GENERAL

<p>Contracting for ambulance service. — County may contract with a funeral director for the operation of an ambulance service, and the county is authorized to fix charges and fees for such a service, but</p>	<p>this duty may be delegated to the operator of the ambulance service because mere collection would be a ministerial act involving little judgment or discretion. 1973 Op. Att’y Gen. No. 73-10.</p>
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RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 15, 16, 20.

40-10-10. Acceptance and administration of funds.

The Governor is designated the appropriate state official to accept and administer any funds which shall be made available to the State of Georgia and its various political subdivisions for the purpose of carrying out a comprehensive highway safety program. (Ga. L. 1967, p. 708, § 8.)

CHAPTER 11

ABANDONED MOTOR VEHICLES

Article 1

Sec.

General Provisions

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 40-11-3. When peace officers may remove vehicles from public property; notification requirements.
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- sale may obtain certificate of title.
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 40-11-10. Disposition of certain contents of abandoned vehicles.

Article 2

Forfeiture of Vehicles and Components

- 40-11-20. Items subject to forfeiture.
 40-11-21. Custody.
 40-11-22. Report of possession; action for condemnation.
 40-11-23. Disposition upon forfeiture.
 40-11-24. Assignment of new identification numbers prior to disposition of property.

Cross references. — Power of counties and municipalities to provide by ordinance for removal and disposal of discarded, dismantled, or junked motor vehicles or motor vehicle parts, § 36-60-4. Disposition of unclaimed property generally, § 44-12-190 et seq.

Administrative rules and regula-

tions. — Creation and Foreclosure of Liens on Removed or Stored Vehicles, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Registration and Licensing of Motor Vehicles, Chapter 375-2-31.

ARTICLE 1

GENERAL PROVISIONS

40-11-1. Definitions.

As used in this article, the term:

- (1) "Abandoned motor vehicle" means a motor vehicle or trailer:

(A) Which has been left by the owner or some person acting for the owner with an automobile dealer, repairman, or wrecker service for repair or for some other reason and has not been called for by such owner or other person within a period of 30 days after

the time agreed upon; or within 30 days after such vehicle is turned over to such dealer, repairman, or wrecker service when no time is agreed upon; or within 30 days after the completion of necessary repairs;

(B) Which is left unattended on a public street, road, or highway or other public property for a period of at least five days and when it reasonably appears to a law enforcement officer that the individual who left such motor vehicle unattended does not intend to return and remove such motor vehicle. However, on the state highway system, any law enforcement officer may authorize the immediate removal of vehicles posing a threat to public health or safety or to mitigate congestion;

(C) Which has been lawfully towed onto the property of another at the request of a law enforcement officer and left there for a period of not less than 30 days without anyone having paid all reasonable current charges for such towing and storage;

(D) Which has been lawfully towed onto the property of another at the request of a property owner on whose property the vehicle was abandoned and left there for a period of not less than 30 days without anyone having paid all reasonable current charges for such towing and storage; or

(E) Which has been left unattended on private property for a period of not less than 30 days.

(2) "Motor vehicle" or "vehicle" means a motor vehicle or trailer.

(3) "Owner" or "owners" means the registered owner, the owner as recorded on the title, lessor, lessee, security interest holders, and all lienholders as shown on the records of the Department of Revenue or the records from the vehicle's state of registration. (Ga. L. 1972, p. 342, § 1; Ga. L. 1977, p. 253, § 1; Ga. L. 1980, p. 995, § 1; Ga. L. 1981, p. 469, § 1; Ga. L. 1984, p. 548, § 1; Ga. L. 1985, p. 1265, § 1; Ga. L. 1993, p. 370, § 3; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2002, p. 563, § 1; Ga. L. 2005, p. 334, § 21-1/HB 501; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2011, p. 777, § 1/HB 114.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 266 (2002).

JUDICIAL DECISIONS

Mobile home. — Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-1 et seq., did not apply in an action for a writ of posses-

sion of a mobile home brought by a creditor against a towing service since the mobile home was not "abandoned" as out-

lined by O.C.G.A. § 40-11-1. *Coweta County Impound & Storage, Inc. v. Security Pacific Fin. Servs.*, 216 Ga. App. 664, 455 S.E.2d 370 (1995).

Failure to provide notice. — Because an operator of a towing service provided no written notification to a lienholder as required by O.C.G.A. § 40-11-1 et seq., the operator forfeited any fees that the statute may have provided for towing and storing. *Purser Truck Sales, Inc. v. Horton*, 276 Ga. App. 17, 622 S.E.2d 405 (2005).

Notice not given for vehicle left at repair shop. — Trial court erred by conditioning a finance company's writ of possession upon the payment of a repair company's storage fees because the repair company failed to provide the notice required by the Abandoned Motor Vehicle

Act, O.C.G.A. § 40-11-2(f); thus, it was prevented from recovery of any storage fees. Further, the trial court erred by finding that the vehicle had not been abandoned since neither the finance company nor the title owner of the vehicle had called for the vehicle within 30 days after the vehicle was left with the repair company. *Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC*, 298 Ga. App. 286, 680 S.E.2d 143 (2009).

Cited in *Miller v. Self*, 137 Ga. App. 717, 224 S.E.2d 823 (1976); *Shaw v. Wheat St. Baptist Church*, 141 Ga. App. 883, 234 S.E.2d 711 (1977); *Atlanta Truck Serv., Inc. v. Associates Com. Corp.*, 146 Ga. App. 170, 246 S.E.2d 2 (1978); *Walker v. Crane*, 243 Ga. App. 838, 534 S.E.2d 520 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property,

§§ 3, 4. 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 1, 2, 9.

40-11-2. Duty of person removing or storing motor vehicle.

(a) Any person who removes a motor vehicle from public property at the request of a law enforcement officer or stores such vehicle shall, if the owner of the vehicle or some person acting for the owner is not present, seek the identity of and address of all known owners of such vehicle from the law enforcement officer requesting removal of such, from such officer's agency, from a local law enforcement agency for the jurisdiction in which the remover's or storer's place of business is located, or from the State of Georgia by direct electronic access as provided through its agencies and authorities within three business days of removal. The local law enforcement agency shall furnish such information to the person removing such vehicle within three business days after receipt of such request.

(b) Any person who removes a motor vehicle from private property at the request of the property owner or stores such vehicle shall, if the owner of the vehicle or some person acting for the owner is not present, notify in writing a local law enforcement agency of the location of the vehicle, the manufacturer's vehicle identification number, license number, model, year, and make of the vehicle within three business days of the removal of such vehicle and shall seek from the local law enforcement agency or from the State of Georgia by direct electronic access as provided through its agencies and authorities the identity and address of all known owners of such vehicle and any information indicating that

such vehicle is a stolen motor vehicle. The local law enforcement agency shall furnish such information to the person removing such vehicle within three business days after receipt of such request.

(c) If any motor vehicle removed under conditions set forth in subsection (a) or (b) of this Code section is determined to be a stolen motor vehicle, the local law enforcement officer or agency shall notify the Georgia Crime Information Center of the location of such motor vehicle within 72 hours after receiving notice that such motor vehicle is a stolen vehicle.

(d) If any motor vehicle removed under conditions set forth in subsection (a) or (b) of this Code section is determined not to be a stolen vehicle or is not a vehicle being repaired by a repair facility or is not being stored by an insurance company providing insurance to cover damages to the vehicle, the person removing or storing such motor vehicle shall, within seven calendar days of the day such motor vehicle was removed or one business day after the information is furnished to the remover or storer pursuant to subsection (a) or (b) of this Code section, whichever is later, notify all owners, if known, by written acknowledgment signed thereby or by certified or registered mail or statutory overnight delivery, of the location of such motor vehicle, the fees connected with removal and storage of such motor vehicle, and the fact that such motor vehicle will be deemed abandoned under this chapter unless the owner, security interest holder, or lienholder redeems such motor vehicle within 30 days of the day such vehicle was removed.

(e) If none of the owners redeems such motor vehicle as described in subsection (d) of this Code section, or if a vehicle being repaired by a repair facility or being stored by an insurance company providing insurance to cover damages to the vehicle becomes abandoned, the person removing or storing such motor vehicle shall, within seven calendar days of the day such vehicle became an abandoned motor vehicle, give notice by electronic means as provided by the State of Georgia through its agencies and authorities, in writing, or by sworn statement, on the form prescribed by the state revenue commissioner, to the Department of Revenue with a research fee as fixed by rule or regulation payable to the Department of Revenue, stating the manufacturer's vehicle identification number, the license number, the fact that such vehicle is an abandoned motor vehicle, the model, year, and make of the vehicle, the date the vehicle became an abandoned motor vehicle, the date the vehicle was removed, and the present location of such vehicle and requesting the name and address of all owners of such vehicle. If the form submitted is rejected because of inaccurate or missing information, the person removing or storing the vehicle shall resubmit, within seven calendar days of the date of the rejection, a

corrected notice form together with an additional research fee as fixed by rule or regulation payable to the Department of Revenue. Each subsequent corrected notice, if required, shall be submitted with an additional research fee as fixed by rule or regulation payable to the Department of Revenue. If a person removing or storing the vehicle has knowledge of facts which reasonably indicate that the vehicle is registered or titled in a certain other state, such person shall check the motor vehicle records of that other state in the attempt to ascertain the identity of the owner of the vehicle. Research requests may be submitted and research fees made payable to the office of the tax commissioner and deposited in the general fund for the county in which the remover's or storer's place of business is located in lieu of the Department of Revenue, but in like manner, if such office processes motor vehicle records of the Department of Revenue.

(f) Upon ascertaining the owners of such motor vehicle, the person removing or storing such vehicle shall, within five calendar days, by certified or registered mail or statutory overnight delivery, notify all known owners of the vehicle of the location of such vehicle and of the fact that such vehicle is deemed abandoned and shall be disposed of if not redeemed.

(g) If the identity of the owners of such motor vehicle cannot be ascertained, the person removing or storing such vehicle shall place an advertisement in a newspaper of general circulation in the county where such vehicle was obtained or, if there is no newspaper in such county, shall post such advertisement at the county courthouse in such place where other public notices are posted. Such advertisement shall run in the newspaper once a week for two consecutive weeks or shall remain posted at the courthouse for two consecutive weeks. The advertisement shall contain a complete description of the motor vehicle, its license and manufacturer's vehicle identification numbers, the location from where such vehicle was initially removed, the present location of such vehicle, and the fact that such vehicle is deemed abandoned and shall be disposed of if not redeemed.

(h) The Department of Revenue shall provide to the Georgia Crime Information Center all relevant information from sworn statements described in subsection (e) of this Code section for a determination of whether the vehicles removed have been entered into the criminal justice information system as stolen vehicles. The results of the determination shall be provided electronically to the Department of Revenue.

(i) Any person storing a vehicle under the provisions of this Code section shall notify the Department of Revenue if the vehicle is recovered, is claimed by the owner, is determined to be stolen, or for any reason is no longer an abandoned motor vehicle. Such notice shall be provided within seven calendar days of such event.

(j) If vehicle information on the abandoned motor vehicle is not in the files of the Department of Revenue, the department may require such other information or confirmation as it determines is necessary or appropriate to determine the identity of the vehicle.

(k) Any person who does not provide the notice and information required by this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor, shall not be entitled to any storage fees, shall not be eligible to contract with or serve on a rotation list providing wrecker services for this state or any political subdivision thereof, and shall not be licensed by any municipal authority to provide removal of improperly parked cars under Code Section 44-1-13.

(l) Any person who knowingly provides false or misleading information when providing any notice or information as required by this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor. (Ga. L. 1972, p. 342, § 2; Ga. L. 1977, p. 253, § 2; Ga. L. 1980, p. 995, § 2; Ga. L. 1981, p. 469, § 2; Ga. L. 1982, p. 3, § 40; Ga. L. 1985, p. 1265, § 2; Ga. L. 1988, p. 1750, § 1; Ga. L. 1990, p. 1657, § 6; Ga. L. 1992, p. 2978, § 10; Ga. L. 1993, p. 772, § 1; Ga. L. 1995, p. 663, § 1; Ga. L. 1996, p. 6, § 40; Ga. L. 1998, p. 1305, § 1; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2000, p. 1589, § 4; Ga. L. 2002, p. 563, § 2; Ga. L. 2005, p. 334, § 21-2/HB 501; Ga. L. 2008, p. 803, § 3/HB 945.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “this chapter” was substituted for “Chapter 11 of this title” in subsection (d).

Law reviews. — For note on 1990

amendment of this Code section, see 7 Ga. St. U.L. Rev. 329 (1990). For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 266 (2002).

JUDICIAL DECISIONS

No conversion when attempt to notify vehicle owner. — Fact that garagemen were not in strict compliance with the notice requirements of O.C.G.A. § 40-11-2 did not mandate a conclusion that garagemen’s actions amounted to a conversion when the garagemen made several attempts to notify the vehicle owner formally and spoke with the owner several times over the telephone, and the owner knew the vehicle would be sold if the owner did not claim the vehicle. *Gearing v. Complete Wrecker Serv., Inc.*, 187 Ga. App. 242, 370 S.E.2d 9 (1988).

Automobile repair shop that failed to comply with the notice requirement of O.C.G.A. § 40-11-2 could not take

advantage of the provision for payment of storage costs by a lienholder in an action by a bank for possession of a vehicle following default by the debtor. *First Nat’l Bank v. Alvin Worley & Sons*, 221 Ga. App. 820, 472 S.E.2d 568 (1996).

Failure to comply with the notice provisions. — Because a vehicle-towing company failed to notify a car owner as required by O.C.G.A. § 40-11-2, it was liable to the owner for conversion as a matter of law when the company refuses to allow the owner to retrieve the car without the owner first paying storage and towing costs. *A Tow, Inc. v. Williams*, 245 Ga. App. 661, 538 S.E.2d 542 (2000).

Because an operator of a towing service

provided no written notification to a lienholder as required by O.C.G.A. § 40-11-1 et seq., the operator forfeited any fees that the statute may have provided for towing and storing. *Purser Truck Sales, Inc. v. Horton*, 276 Ga. App. 17, 622 S.E.2d 405 (2005).

Trial court erred by conditioning a finance company's writ of possession upon the payment of a repair company's storage fees because the repair company failed to provide the notice required by the Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-2(f); thus, it was prevented from recovery of any storage fees. Further, the trial court erred by finding that the vehicle had not been abandoned since neither the finance company nor the title owner of

the vehicle had called for the vehicle within 30 days after the vehicle was left with the repair company. *Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC*, 298 Ga. App. 286, 680 S.E.2d 143 (2009).

Notice not required when owner known. — Under the 1994 version of O.C.G.A. § 40-11-2(b), a wrecker service which pulled and stored a vehicle in the good faith belief that the owner was known was exempt from compliance with the notice requirements of that section. *Walker v. Crane*, 243 Ga. App. 838, 534 S.E.2d 520 (2000).

Cited in *Shaw v. Wheat St. Baptist Church*, 141 Ga. App. 883, 234 S.E.2d 711 (1977).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 32 et seq.

40-11-3. When peace officers may remove vehicles from public property; notification requirements.

(a) Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other public property for a period of at least five days shall be authorized to cause such motor vehicle to be removed to a garage or other place of safety, if such peace officer reasonably believes that the person who left such motor vehicle unattended does not intend to return and remove such motor vehicle.

(b) Any law enforcement officer who finds a motor vehicle which has been left unattended on the state highway system shall be authorized to cause such motor vehicle to be removed immediately to a garage or other place of safety when such motor vehicle poses a threat to public health or safety or to mitigate congestion. Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other public property, other than the state highway system, shall be authorized immediately to cause such motor vehicle to be removed immediately to a garage or other place of safety when such motor vehicle poses a threat to public health or safety or to mitigate congestion.

(c) Any peace officer who, under this Code section, causes any motor vehicle to be removed to a garage or other place of safety shall be liable for gross negligence only.

(d)(1) Any peace officer or the law enforcement agency which causes a motor vehicle to be removed to a garage or other place of safety or

which is notified of the removal of a motor vehicle from private property shall within 72 hours from the time of removal or notice and if the owner is unknown attempt to determine vehicle ownership through official inquiries to the Department of Revenue vehicle registration and vehicle title files. These inquiries shall be made from authorized criminal justice information system network terminals.

(2) If the name and address of the last known registered owner of the motor vehicle is obtained from the Georgia Crime Information Center, the peace officer who causes the motor vehicle to be removed shall, within three calendar days, make available to the person removing such motor vehicle the name and address of the last known registered owner of such motor vehicle, the owner of the motor vehicle as recorded on the title of such vehicle, and all security interest holders or lienholders. If such information is not available, the peace officer shall, within three calendar days, notify the person removing or storing such vehicle of such fact.

(3) Law enforcement agencies shall make record entries in Georgia criminal justice information system files through authorized criminal justice information system network terminals after an unsuccessful attempt to obtain vehicle ownership information and shall remove the record entries when ownership is determined. (Ga. L. 1972, p. 342, § 3; Ga. L. 1980, p. 995, § 3; Ga. L. 1984, p. 548, § 2; Ga. L. 1988, p. 1750, § 2; Ga. L. 1990, p. 1657, § 7; Ga. L. 1993, p. 370, § 4; Ga. L. 1995, p. 663, § 2; Ga. L. 1996, p. 6, § 40; Ga. L. 1997, p. 143, § 40; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 21-3/HB 501.)

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

Authority to tow cars limited. — Wrecker service acting under a contract with a subdivision of townhouses did not have authority to tow a car from a public street within the subdivision. *Hardin v. City Wide Wrecker Serv., Inc.*, 232 Ga. App. 617, 502 S.E.2d 548 (1998).

Indefinite retention of vehicles not authorized. — Enforcement officers ini-

tially authorized to remove or impound a vehicle do not have a duty to retain possession indefinitely; the statutes require only the removal to a "garage or other place of safety," not necessarily into the custody of the authorities, and there is nothing about the vehicle's ultimate disposition. *Strickland v. Vaughn*, 221 Ga. App. 636, 472 S.E.2d 159 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 10.

ALR. — State or municipal towing,

impounding, or destruction of motor vehicles parked or abandoned on streets or highways, 32 ALR4th 728.

40-11-3.1. Unattended vehicle checks.

(a) It shall be the duty of any peace officer who discovers a motor vehicle which has been left unattended on a public street, road, or highway or other public property to immediately perform an unattended vehicle check on such motor vehicle, unless there is displayed on such motor vehicle an unattended vehicle check card indicating that another peace officer has already performed such an unattended vehicle check. For purposes of this Code section, an unattended vehicle check shall consist of such actions as are reasonably necessary to determine that the unattended vehicle does not contain an injured or incapacitated person and to determine that the unattended vehicle does not pose a threat to public health or safety.

(b) A peace officer completing an unattended vehicle check shall complete and attach to the vehicle an unattended vehicle check card. Unattended vehicle check cards shall be in such form, and shall be attached to vehicles in such manner, as may be specified by rule or regulation of the Department of Public Safety; and to the extent that sufficient funds are available to the department, the department may distribute such forms free of charge to law enforcement agencies in this state. Unattended vehicle check cards shall be serially numbered; shall be of a distinctive color and shape, so as to be readily visible to passing motorists; and shall contain spaces for the investigating police officer to indicate the location of the vehicle, the date and time of the completion of the unattended vehicle check, and the name of such peace officer's law enforcement agency. A detachable stub, which shall be filed with the investigating peace officer's law enforcement agency, shall bear the same serial number and shall contain the same information, together with the identity of the investigating peace officer and the license plate number and other pertinent identifying information relating to the abandoned vehicle.

(c) Nothing in the Code section shall limit the otherwise applicable authority of a peace officer to have an unattended motor vehicle removed to a garage or other place of safety.

(d) It shall be unlawful for any person other than a peace officer to attach a genuine or counterfeit unattended motor vehicle check card to a motor vehicle; and any person convicted of violating this subsection shall be guilty of a misdemeanor. (Code 1981, § 40-11-3.1, enacted by Ga. L. 1988, p. 688, § 1; Ga. L. 2000, p. 951, § 7-1.)

40-11-3.2. Limited prohibition on towing vehicles within paid parking facility located within 500 feet of an establishment serving alcohol.

(a) It shall be unlawful for the owner or operator of a paid private parking lot or paid private parking facility located within 500 feet of an

establishment which serves alcoholic beverages for consumption on the premises to remove, tow, or immobilize or cause to be removed, towed, or immobilized a motor vehicle left in such lot or facility between midnight and noon of the following day. Nothing in this Code section shall prohibit the owner of such a parking lot or facility from charging a penalty not to exceed \$25.00 in excess of normal parking fees for vehicles which remain on the property during such period without authorization. No owner or operator of such a parking lot or facility shall be liable for any damages to any motor vehicle remaining on the property during such period without authorization. Nothing in this Code section shall prohibit a resident or a business owner from towing or removing or causing to be towed or removed a motor vehicle left on private property. For purposes of this subsection, the terms "paid private parking lot" and "paid private parking facility" mean private parking lots where the owner or operator of a motor vehicle pays a valuable consideration for the right to park in such parking lot or parking facility.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-11-3.2, enacted by Ga. L. 2002, p. 563, § 3.)

Law reviews. — For note on the 2002 enactment of this Code section, see 19 Ga. St. U.L. Rev. 266 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offense arising under O.C.G.A. § 40-11-3.2 does not require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

40-11-4. Creation of lien; courts authorized to foreclose lien.

(a) Any person who removes or stores any motor vehicle which is or becomes an abandoned motor vehicle shall have a lien on such vehicle for the reasonable fees connected with such removal or storage plus the cost of any notification or advertisement up to the date of retrieval or public sale of such vehicle. Such lien shall exist if the person moving or storing such vehicle is in compliance with Code Section 40-11-2.

(b) The lien acquired under subsection (a) of this Code section may be foreclosed in any court which is competent to hear civil cases, including, but not limited to, magistrate courts. Liens shall be foreclosed in magistrate courts only when the amount of the lien does not exceed the jurisdictional limits established by law for such courts. (Ga. L. 1972, p. 342, § 3; Ga. L. 1980, p. 995, § 4; Ga. L. 1981, p. 469, § 3; Ga. L. 1983, p. 884, § 3-28; Ga. L. 1984, p. 22, § 40; Ga. L. 1998, p. 1305, § 2; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2014, p. 807, § 4/HB 753.)

The 2014 amendment, effective July 1, 2014, added “up to the date of retrieval

or public sale of such vehicle” at the end of the first sentence of subsection (a).

JUDICIAL DECISIONS

Satisfaction of abandoned motor vehicle lien. — Holder of a security interest in an automobile was entitled to the foreclosure and possession of the vehicle, subject to satisfaction of an abandoned motor vehicle lien acquired by a towing company where the towing company had complied with O.C.G.A. § 40-11-2 and had a proper lien. *Atlantic Steel Credit Union v. Shephard*, 204 Ga. App. 297, 419 S.E.2d 132 (1992).

Owner's claims for vehicle which was not abandoned. — Repeated and timely claims by owner for owner's tractor made O.C.G.A. § 40-11-4 inapplicable as vehicle was not “abandoned.” *Mays v. Lampkin*, 207 Ga. App. 737, 429 S.E.2d 113 (1993).

Failure to provide notice. — Because an operator of a towing service provided no written notification as required by O.C.G.A. § 40-11-1 et seq., the operator forfeited any fees that the statute may have provided for towing and storing.

Purser Truck Sales, Inc. v. Horton, 276 Ga. App. 17, 622 S.E.2d 405 (2005).

Notice not given for vehicle left at repair shop. — Trial court erred by conditioning a finance company's writ of possession upon the payment of a repair company's storage fees because the repair company failed to provide the notice required by the Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-2(f); thus, it was prevented from recovery of any storage fees. Further, the trial court erred by finding that the vehicle had not been abandoned since neither the finance company nor the title owner of the vehicle had called for the vehicle within 30 days after the vehicle was left with the repair company. *Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC*, 298 Ga. App. 286, 680 S.E.2d 143 (2009).

Cited in *Gearing v. Complete Wrecker Serv., Inc.*, 187 Ga. App. 242, 370 S.E.2d 9 (1988); *A Tow, Inc. v. Williams*, 245 Ga. App. 661, 538 S.E.2d 542 (2000).

40-11-5. Lien foreclosure procedure.

All liens acquired under Code Section 40-11-4 shall be foreclosed as follows:

(1) Any proceeding to foreclose a lien on an abandoned motor vehicle must be instituted within one year from the time the lien is recorded or is asserted by retention;

(2) The person desiring to foreclose a lien on an abandoned motor vehicle shall, by certified or registered mail or statutory overnight delivery, make a demand upon the owners for the payment of the reasonable fees for removal and storage plus the costs of any notification or advertisement up to the date of retrieval or public sale of such vehicle. Such written demand shall include an itemized statement of all charges and may be made concurrent with the notice required by subsection (f) of Code Section 40-11-2. Such demand shall be made on a form prescribed by rule or regulation of the Department of Revenue and shall notify the owner of his or her right to a judicial hearing to determine the validity of the lien. The demand shall further state that failure to return the written demand to the lien claimant, file with a court of competent jurisdiction a petition for a

judicial hearing, and provide the lien claimant with a copy of such petition, all within ten days of delivery of the lien claimant's written demand, shall effect a waiver of the owner's right to such a hearing prior to sale. The form shall also provide the suspected owner with the option of disclaiming any ownership of the vehicle, and his or her affidavit to that effect shall control over anything contrary in the records of the Department of Revenue. No such written demand shall be required if the identity of the owner cannot be ascertained and the notice requirements of subsection (g) of Code Section 40-11-2 have been complied with;

(3)(A) If, within ten days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section, the owner of the abandoned motor vehicle fails to pay or file with the court a petition for a judicial hearing with a copy to the lien claimant in accordance with the notice provided pursuant to paragraph (2) of this Code section, or if the owner of the abandoned motor vehicle cannot be ascertained, the person removing or storing the abandoned motor vehicle may foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a court of competent jurisdiction, on a form prescribed by rule or regulation of the Department of Revenue, showing all facts necessary to constitute such lien and the amount claimed to be due. Such affidavit shall aver that the notice requirements of Code Section 40-11-2 have been complied with, and such affidavit shall also aver that a demand for payment in accordance with paragraph (2) of this Code section has been made without satisfaction or without a timely filing of a petition for a judicial hearing or that the identity of the owner cannot be ascertained. The person foreclosing shall verify the statement by oath or affirmation and shall affix his or her signature thereto.

(B) Regardless of the court in which the affidavit required by this paragraph is filed, the fee for filing such affidavit shall only be \$10.00 per motor vehicle upon which a lien is asserted. Notwithstanding any law to the contrary, the affidavit filing fee shall not be taxed nor shall any additional fee or surcharge be assessed for such filing.

(4) If no timely petition for a hearing has been filed with a court of competent jurisdiction, then, upon such affidavit's being filed by the lien claimant pursuant to paragraph (3) of this Code section, the lien will conclusively be deemed a valid one and foreclosure thereof allowed;

(5) If a petition for a hearing is filed with a court of competent jurisdiction within ten days after delivery of the lien claimant's demand, a copy of which demand shall be attached to the petition, the court shall set such a hearing within ten days of filing of the petition;

(6) Upon the filing of such petition by an owner, neither the lien claimant nor the court may sell the motor vehicle, although possession of the motor vehicle may be retained by the lien claimant or obtained by the court in accordance with the order of the court which sets the date for the hearing;

(7) If, after a full hearing, the court finds that a valid debt exists, then the court shall authorize foreclosure upon and sale of the motor vehicle subject to the lien to satisfy the debt if such debt is not otherwise immediately paid;

(8) If the court finds the actions of the person asserting the lien in retaining possession of the motor vehicle were not taken in good faith, then the court, in its discretion, may award damages to the owner, any party which has been deprived of the rightful use of the vehicle, or the lessee due to the deprivation of the use of the motor vehicle; and

(9) If an affidavit meeting the requirements of paragraph (3) of this Code section is filed and no petition for a hearing is timely filed, or if, after a full hearing, the court determines that a valid debt exists, the court shall issue an order authorizing the sale of such motor vehicle. However, the holder of a security interest in or a lien on the vehicle, other than the holder of a lien created by Code Section 40-11-4, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs. If the holder of a security interest or lien does so pay the debt and court costs, he or she shall have the right to possession of the vehicle, and his or her security interest in or lien on such vehicle shall be increased by the amount so paid. A court order shall be issued to this effect, and in this instance there shall not be a sale of the vehicle. (Ga. L. 1980, p. 995, § 5; Ga. L. 1982, p. 1650, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 1265, § 3; Ga. L. 1988, p. 1750, § 3; Ga. L. 1998, p. 1305, § 3; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2000, p. 1589, §§ 3, 4; Ga. L. 2002, p. 563, § 4; Ga. L. 2005, p. 334, § 21-4/HB 501; Ga. L. 2011, p. 777, § 2/HB 114; Ga. L. 2014, p. 807, § 5/HB 753.)

The 2014 amendment, effective July 1, 2014, added “up to the date of retrieval or public sale of such vehicle” at the end of the first sentence of paragraph (2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, “Code

section” was substituted for “subsection” twice in subparagraph (3)(A), in paragraph (4), and in paragraph (9).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 266 (2002).

JUDICIAL DECISIONS

Failure to comply strictly with notice provisions. — Notice issued by a towing company did not include an item-

ized list of the charges underlying the lien and neglected to notify the recipient that the failure to petition for a judicial hear-

ing would waive the recipient's right to a hearing before the public sale; thus, absent strict compliance with the notice provisions of O.C.G.A. § 40-11-5(2), a valid lien upon the vehicle had not been created upon which to foreclose. Accordingly, in a conversion action, the towing company owner was properly ordered to return the vehicle to the owner. *Horner v. Robinson*, 299 Ga. App. 327, 682 S.E.2d 578 (2009).

Violation of automatic stay. — Court denied motion to dismiss creditor's complaint seeking an order that a towing company's statutory lien be set aside under 11 U.S.C. § 545(2) as the company violated the automatic stay, 11 U.S.C. § 362(a)(4), when the company impounded a debtor's truck and took steps to obtain a statutory lien and to have the truck declared legally abandoned under O.C.G.A. § 40-11-5 as the bankruptcy court had subject matter jurisdiction over

causes of action relating to the enforcement of the automatic stay and the avoidance of a statutory lien, which were both created and determined by Title 11. The matter was related to bankruptcy, as it was certainly conceivable that the outcome of this proceeding could have an effect on the debtor's bankruptcy case because if the creditor prevailed, the creditor would sell the truck, and any proceeds from the sale in excess of the creditor's claim would be returned to the estate. *Mercedes-Benz Fin. Servs. of Am., LLC v. Corner Lot, Inc. (In re Lyons)*, 489 B.R. 270 (Bankr. N.D. Ga. 2013).

Cited in *Atlanta Truck Serv., Inc. v. Associates Com. Corp.*, 146 Ga. App. 170, 246 S.E.2d 2 (1978); *Gearing v. Complete Wrecker Serv., Inc.*, 187 Ga. App. 242, 370 S.E.2d 9 (1988); *Mitsubishi Motors Credit of Am., Inc. v. Robinson & Stephens, Inc.*, 263 Ga. App. 168, 587 S.E.2d 146 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Affidavit filing fee in foreclosure of lien on abandoned motor vehicle. — Magistrate court should collect only a \$5.00 fee per vehicle upon the filing of an affidavit in support of the foreclosure of a lien on any abandoned motor vehicle pursuant to subparagraph (3)(B) of O.C.G.A.

§ 40-11-5; the \$20.00 filing fee for civil actions in magistrate court should not be collected until the filing of a petition for probable cause hearing pursuant to paragraph (5) of O.C.G.A. § 40-11-5. 1989 Op. Att'y Gen. U89-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property, § 48.

40-11-6. Sale of vehicle pursuant to foreclosure.

(a) Upon order of the court, the person holding the lien on the abandoned motor vehicle shall be authorized to sell such motor vehicle at public sale, as defined by Code Section 11-1-201.

(b) After satisfaction of the lien, the person selling such motor vehicle shall, not later than 30 days after the date of such sale, provide the clerk of the court with a copy of the bill of sale as provided to the purchaser and turn the remaining proceeds of such sale, if any, over to the clerk of the court. Any person who fails to comply with the requirements of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor. (Ga. L. 1980, p. 995, § 6; Ga. L. 1998, p. 1305, § 4; Ga. L. 2000, p. 951, § 7-1.)

40-11-7. How purchaser at foreclosure sale may obtain certificate of title.

The purchaser at a sale as authorized in this article shall receive a certified copy of the court order authorizing such sale. Any such purchaser may obtain a certificate of title to such motor vehicle by filing the required application, paying the required fees, and filing a certified copy of the order of the court with the Department of Revenue. The Department of Revenue shall then issue a certificate of title, which shall be free and clear of all liens and encumbrances. (Ga. L. 1972, p. 342, § 4; Ga. L. 1975, p. 913, § 1; Ga. L. 1977, p. 253, § 3; Ga. L. 1980, p. 995, § 7; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2005, p. 334, § 21-5/HB 501.)

40-11-8. Disposition of proceeds of foreclosure sale.

The clerk of the court shall retain the remaining balance of the proceeds of a sale under Code Section 40-11-6, after satisfaction of liens, security interests, and debts, for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned motor vehicle or any interested party, then he or she shall pay such remaining balance as follows:

(1) If the abandoned motor vehicle came into the possession of the person creating the lien other than at the request of a peace officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made, into the general fund of the municipality, if any, in which the sale was made, and to the person who placed the lien on the motor vehicle which resulted in foreclosure;

(2) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a police officer of a municipality, the proceeds of the sale shall be divided equally and paid into the general fund of the municipality and to the person who placed the lien on the motor vehicle which resulted in foreclosure;

(3) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a county sheriff, deputy sheriff, or county police officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made and to the person who placed the lien on the motor vehicle which resulted in foreclosure; or

(4) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the proceeds of the sale shall be divided equally and paid into the general fund of

the county in which the sale was made and to the person who placed the lien on the motor vehicle which resulted in foreclosure. (Ga. L. 1972, p. 342, § 8; Ga. L. 1977, p. 253, § 5; Ga. L. 1980, p. 995, § 8; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2014, p. 807, § 6/HB 753.)

The 2014 amendment, effective July 1, 2014, in paragraph (1), substituted “sale was made, into” for “sale was made into” in the middle and added “, and to the person who placed the lien on the motor vehicle which resulted in foreclosure” at the end; inserted “divided equally and” in paragraphs (2) through (4); added “and to

the person who placed the lien on the motor vehicle which resulted in foreclosure” at the end of paragraphs (2) and (4); and substituted “made and to the person who placed the lien on the motor vehicle which resulted in foreclosure; or” for “made;” at the end of paragraph (3).

40-11-9. Derelict motor vehicles; determination of status; disposition; violations and penalties.

(a) If a motor vehicle has been left unattended on private property for not less than two days or on public property for not less than three days without the owner or driver making any attempt to recover such vehicle or to leave a conspicuously placed note that such owner or driver intends to return for such vehicle; or, if a conspicuous note was left, if the motor vehicle has been left unattended for not less than five days and if because of damage, vandalism, theft, or fire the vehicle is damaged to the extent that its restoration to an operable condition would require the replacement of one or more major component parts or involves any structural damage that would affect the safety of the vehicle; or if there is evidence that the vehicle was inoperable due to major mechanical breakdown at the time it was left on the property, such as the engine, transmission, or wheels missing, no coolant in the cooling system, no oil in the engine, or burned fluid in the transmission; or if the vehicle is seven or more years old; or if the vehicle is not currently tagged or is not verifiable by the state as to who is the current owner or lienholder of the vehicle; or if the vehicle has been abandoned to a wrecker service by an insurance company and the owner following the insurance company's making a total loss payment, then any person removing such vehicle shall within 72 hours of removing such vehicle obtain the identity of and address of the last known registered owner of the vehicle, the owner of the vehicle as recorded on the certificate of title of such vehicle, and any security interest holder or lienholder on such vehicle from the local law enforcement agency of the jurisdiction in which the vehicle was located. If the law enforcement agency shows no information on the vehicle, then a request for such information shall be sent to the Department of Revenue. Within 72 hours after obtaining such information, the person removing such vehicle shall, by certified mail or statutory overnight delivery, return receipt requested, notify the registered owner, title owner, and security interest holder or lienholder of the vehicle that such vehicle will be declared a derelict

vehicle and the title to such vehicle will be canceled by the Department of Revenue if such person or persons fail to respond within ten days of receipt of such notice. The state revenue commissioner shall prescribe the form and content of such notice. If the registered owner, title owner, or security interest holder or lienholder fails to respond within 30 days from the date of such notice by certified mail or statutory overnight delivery, and if the vehicle is appraised as having a total value of less than \$300.00, the vehicle shall be considered to be a derelict vehicle. The value of the vehicle shall be determined as 50 percent of the wholesale value of a similar car in the rough section of the *National Auto Research Black Book, Georgia Edition*, or if a similar vehicle is not listed in such book or, regardless of the model year or book value of the vehicle, if the vehicle is completely destroyed by fire, flood, or vandalism or is otherwise damaged to the extent that restoration of the vehicle to a safe operable condition would require replacement of more than 50 percent of its major component parts, the person shall obtain an appraisal of the motor vehicle from the local law enforcement agency's auto theft section with jurisdiction in the county or municipality where such vehicle is located. Any person removing a vehicle shall complete a form, to be provided by the Department of Revenue, indicating that the vehicle meets at least four of the above-stated eight conditions for being a derelict vehicle and shall file such form with the Department of Revenue and the law enforcement agency with jurisdiction from which such vehicle was removed.

(b) Upon determination that a vehicle is a derelict motor vehicle as provided in subsection (a) of this Code section, it may be disposed of by sale to a person who scraps, dismantles, or demolishes motor vehicles, provided that such vehicle may be sold for scrap or parts only and shall in no event be rebuilt or sold to the general public. Any person disposing of a derelict motor vehicle shall, prior to disposing of such vehicle, photograph such vehicle and retain with such photograph the appraisal required in subsection (a) of this Code section and the notice to the Department of Revenue required in this subsection for a period of three years after its disposition. Such person shall also notify the Department of Revenue of the disposition of such vehicle in such manner as may be prescribed by the state revenue commissioner. The Department of Revenue shall cancel the certificate of title for such vehicle and shall not issue a rebuilt or salvage title for such vehicle.

(c) For purposes of this Code section, the term "derelict vehicle" shall not include a vehicle which does not bear a manufacturer's vehicle identification number plate or a vehicle identification number plate assigned by a state jurisdiction.

(d) Any person who abandons a derelict motor vehicle on public or private property shall be guilty of a misdemeanor and upon conviction

shall be fined not more than \$500.00 and shall pay all costs of having such derelict motor vehicle removed, stored, and sold as provided for in this Code section. Notwithstanding any other provision of law to the contrary, such fines shall be disposed as follows:

(1) If the abandoned motor vehicle was removed other than at the request of a peace officer, the moneys arising from the fine shall be divided equally and paid into the general fund of the county in which the offense was committed and into the general fund of the municipality, if any, in which the offense was committed;

(2) If the abandoned motor vehicle was removed at the request of a police officer of a municipality, the moneys arising from the fine shall be paid into the general fund of the municipality;

(3) If the abandoned motor vehicle was removed at the request of a county sheriff, deputy sheriff, or county police officer, the moneys arising from the fine shall be paid into the general fund of the county in which the offense was committed; and

(4) If the abandoned motor vehicle was removed at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the moneys arising from the fine shall be paid into the general fund of the county in which the offense was committed.

(e) Any person removing a derelict motor vehicle who fails to comply with the requirements of this Code section or who knowingly provides false or misleading information when providing any notice or information required by this Code section shall be guilty of a misdemeanor.

(f) Neither the State of Georgia nor any state agency nor the person removing, storing, and processing the vehicle unless recklessly or grossly negligent shall be liable to the owner of a vehicle declared to be a derelict motor vehicle pursuant to this Code section or an abandoned motor vehicle. (Code 1981, § 40-11-9, enacted by Ga. L. 1993, p. 772, § 2; Ga. L. 1994, p. 97, § 40; Ga. L. 1998, p. 1305, § 5; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 334, § 21-6/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “fail to respond” was substituted for “fails to respond” in the third sentence in subsection

(a) and “manufacturer’s vehicle” was substituted for “manufactured vehicle” in subsection (c).

40-11-10. Disposition of certain contents of abandoned vehicles.

(a) As used in this Code section, the term “contents” means only the following:

(1) Prescription drugs or eyewear;

(2) Personal documents, including, but not limited to, birth records, passports, or death records;

(3) Firearms;

(4) Medical devices;

(5) Child safety restraining devices; or

(6) Keys, except the keys to the abandoned motor vehicle.

(b) Any person who stores an abandoned motor vehicle pursuant to the provisions of this article shall allow the owner of such vehicle to retrieve the contents from such vehicle, and the owner of a motor vehicle shall be allowed to retrieve contents and any other item from such vehicle if such retrieval occurs within the first 30 days that such vehicle is stored.

(c) Prior to the sale or other final disposition of an abandoned motor vehicle, if the person who stores such vehicle locates contents, as defined in paragraphs (1) through (3) of subsection (a) of this Code section, in such vehicle, such person shall surrender such contents to the nearest law enforcement agency. (Code 1981, § 40-11-10, enacted by Ga. L. 2011, p. 777, § 3/HB 114.)

ARTICLE 2

FORFEITURE OF VEHICLES AND COMPONENTS

Editor's notes. — The former Article 2, concerning Disposition of Abandoned Vehicles by Wrecking Companies, was repealed by Ga. L. 1981, p. 469, § 4, effective July 1, 1981.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 392.

40-11-20. Items subject to forfeiture.

The following items are declared to be contraband and are subject to forfeiture:

(1) Any motor vehicle the manufacturer's vehicle identification number of which has been removed, altered, defaced, falsified, or destroyed; and

(2) Any component part of a motor vehicle the manufacturer's identification number of which has been removed, altered, defaced, falsified, or destroyed. (Code 1981, § 40-11-20, enacted by Ga. L. 1988, p. 1948, § 1; Ga. L. 2000, p. 951, § 7-1.)

RESEARCH REFERENCES

ALR. — Criminal liability, under state law, concerning illegal removal or alteration of vehicle identification number, including sale or possession of altered motor vehicles or parts, 107 ALR5th 567.

40-11-21. Custody.

Property subject to forfeiture under Code Section 40-11-20 and in the possession of any state or local law enforcement agency shall not be subject to replevin but is deemed to be in the custody of the superior court of the county wherein the property is located subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. (Code 1981, § 40-11-21, enacted by Ga. L. 1988, p. 1948, § 1; Ga. L. 2000, p. 951, § 7-1.)

40-11-22. Report of possession; action for condemnation.

The law enforcement agency having possession of any property subject to forfeiture under Code Section 40-11-20 shall report such fact, within ten days of taking possession, to the district attorney of the judicial circuit having jurisdiction in the county where the property is located. Within 30 days from the date he or she receives such notice, the district attorney of the judicial circuit shall file in the superior court of the county in which the property is located an action for condemnation of the property. The proceedings shall be brought in the name of the state, and the action shall be verified by a duly authorized agent of the state in the manner required by law. The action shall describe the property, state its location, state its present custodian, state the name of the owner, if known, to the duly authorized agent of the state, allege the essential elements which are claimed to exist, and shall conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such an action, the court shall promptly cause process to issue to the present custodian in possession of the property described in the action, commanding him or her to seize the property described in the action and to hold that property for further order of the court. A copy of the action shall be served on the owner, if known. If the owner is known, a copy of the action shall also be served upon any person having a duly recorded security interest in or lien upon that property. If the owner is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself so as to avoid service, notice of the proceedings shall be published once a week for two weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceeding and from any sale of the property resulting therefrom but shall not constitute notice to any person having a duly recorded security

interest in or lien upon such property and required to be served under this Code section unless that person is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself to avoid service. At the expiration of 30 days after such filing, if no claimant has appeared to defend the action, the court shall order the disposition of the seized property as provided for in this Code section. If the owner of the property appears and defends the action and can show that he or she was unaware of the fact that the identification number had been removed, altered, defaced, falsified, or destroyed, the court shall order the property returned to the owner upon the owner's paying proper expenses relating to proceedings for forfeiture, including the expenses of the maintenance of custody, advertising, and court costs and upon the property's being assigned a new identification number as provided in this article. (Code 1981, § 40-11-22, enacted by Ga. L. 1988, p. 1948, § 1; Ga. L. 2000, p. 951, § 7-1.)

40-11-23. Disposition upon forfeiture.

Except as otherwise provided in this article, when property is forfeited under this article, the court may:

- (1) Order that the property be retained by the law enforcement agency or the county in which the property is located; or
- (2) Order that the property be disposed of by sale, the proceeds of which shall be used to pay the proper expenses relating to the proceedings for forfeiture, including the expenses of maintenance of custody, advertising, and court costs, with the remaining funds to be paid into the general fund of the county. (Code 1981, § 40-11-23, enacted by Ga. L. 1988, p. 1948, § 1; Ga. L. 2000, p. 951, § 7-1.)

40-11-24. Assignment of new identification numbers prior to disposition of property.

Prior to the property's being sold or returned to the owner or otherwise disposed of, the Department of Revenue shall assign it a new identification number. (Code 1981, § 40-11-24, enacted by Ga. L. 1988, p. 1948, § 1; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2005, p. 334, § 21-7/HB 501.)

CHAPTER 12

ACTIONS AGAINST NONRESIDENT MOTORISTS

Sec.		Sec.	
40-12-1.	Appointment of Secretary of State as agent for service of process on nonresidents; non-resident minor.	40-12-5.	Certificate of service to be sent to clerk of court; time for answering complaint.
40-12-2.	How service on nonresident made.	40-12-6.	Continuances.
40-12-3.	Venue of actions against non-residents; nonresident joint defendant.	40-12-7.	Designation of employees to perform functions of Secretary of State.
40-12-4.	Records to be kept by Secretary of State.	40-12-8.	Service upon personal representative.

Law reviews. — For article surveying trial practice and procedure, see 34 Mercer L. Rev. 299 (1982). For annual survey article on trial practice and procedure, see 50 Mercer L. Rev. 359 (1998).

For note discussing constitutional restrictions on the exercise of personal jurisdiction, see 11 Ga. L. Rev. 149 (1976).

For comment criticizing *Young v. Morrison*, 220 Ga. 127, 137 S.E.2d 456 (1964),

finding unconstitutional the 1957 amendment to the Nonresident Motorists' Act (Ga. L. 1957, p. 649), authorizing suit against nonstate resident who when cause of action arose was a state resident, see 16 Mercer L. Rev. 360 (1964). For comment, "Jurisdiction over Nonresidents in Georgia: *Crowder v. Ginn*," see 17 Ga. L. Rev. 201 (1982).

JUDICIAL DECISIONS

Purpose of the Georgia Nonresident Motorist Act is to subject a nonresident to the jurisdiction of Georgia courts on the theory that by using Georgia highways the nonresident consents to be sued in Georgia on causes of action arising from an alleged tort liability incurred by the nonresident's use of the highways. *Aldrich v. Johns*, 93 Ga. App. 787, 92 S.E.2d 804 (1956).

Both the original act and the amendment enacted by Ga. L. 1957, pp. 649, 650, were intended to give a plaintiff user of the highways of Georgia a county of venue within the state, where the collision occurred therein and where otherwise the plaintiff would be forced into the courts of another state to protect the plaintiff's rights. *Tomlinson v. Sadler*, 99 Ga. App. 482, 109 S.E.2d 84 (1959).

Main and controlling purpose of the

Georgia Nonresident Motorist Act was to provide a ready and efficient remedy in this state for injuries occasioned by the negligent operation of motor vehicles upon the highways of this state by nonresidents who are merely passing through or have no fixed residence or place of business here where they may be readily found and sued, and thus to relieve the persons claiming to have been damaged from the necessity of pursuing the nonresidents into some other state for the purpose of obtaining redress. *Hirsch v. Shepherd Lumber Corp.*, 194 Ga. 113, 20 S.E.2d 575, answer conformed to, 67 Ga. App. 474, 21 S.E.2d 110 (1942); *Cheeley v. Fujino*, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Construction of chapter. — Nothing less than the strict requirements of this statute, which is in derogation of common law, will suffice in the absence of a show-

ing of evasion by the nonresident. *Stone v. Sinkfield*, 70 Ga. App. 787, 29 S.E.2d 310 (1944).

Georgia Nonresident Motorist Act is in derogation of common law and must be strictly construed. Furthermore, if the statute is at all ambiguous or doubtful in meaning, the statute must receive a constitutional construction if possible. *Aldrich v. Johns*, 93 Ga. App. 787, 92 S.E.2d 804 (1956).

Georgia Nonresident Motorist Act, being in derogation of common law, must be strictly construed. *Tomlinson v. Sadler*, 99 Ga. App. 482, 109 S.E.2d 84 (1959); *Foster v. Lankford*, 120 Ga. App. 573, 171 S.E.2d 662 (1969); *Hanft v. Allbright*, 132 Ga. App. 263, 208 S.E.2d 20 (1974); *Rogers v. Hagen*, 445 F. Supp. 361 (N.D. Ga. 1978).

While the provisions of the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-1 et seq., are strictly construed when service of process is attempted pursuant to that Act, this rule of strict construction does not apply when jurisdiction is obtained under the Georgia Long Arm Statute, O.C.G.A. § 9-10-94. *King v. Barrios*, 257 Ga. App. 538, 571 S.E.2d 531 (2002).

Application of chapter to nonresidents. — Georgia Nonresident Motorist Act applies to all nonresident defendants in tort actions resulting from the use of the highways of this state. *Cheeley v. Fujino*, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Georgia Nonresident Motorist Act applies only to those persons who were in fact nonresidents at the time they were exercising the rights and privileges referred to in O.C.G.A. § 40-12-1. *Bailey v. Hall*, 199 Ga. App. 602, 405 S.E.2d 579 (1991).

Defendant's residence at the time the cause of action arises, not defendant's residence when the suit is filed or process is served, governs the defendant's amenability to service of a suit under the Georgia Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq. *Brown v. Meyer*, 222 Ga. App. 133, 473 S.E.2d 521 (1996).

Service on residents precluded. — Georgia Nonresident Motorist Act was intended to apply to nonresident defendants only, and not to permit a suit to be filed

against a resident defendant and a nonresident defendant in a county other than that of the resident defendant. *Lowe v. Roberts*, 59 Ga. App. 890, 2 S.E.2d 748 (1939).

Georgia Nonresident Motorist Act is a jurisdictional statute and specifically authorizes service upon nonresidents, which by necessary implication precludes service under the statute's terms on one who is a resident of this state. *Davis v. Holt*, 105 Ga. App. 125, 123 S.E.2d 686 (1961).

When one resides in this state, one is not subject to service under the Georgia Nonresident Motorist Act, even though one may be a resident of another state also. *Davis v. Holt*, 105 Ga. App. 125, 123 S.E.2d 686 (1961).

Georgia Nonresident Motorist Act is inapplicable where the defendant is a resident of the state. *Foster v. Lankford*, 120 Ga. App. 573, 171 S.E.2d 662 (1969).

Resident and nonresident joint tortfeasors. — Georgia Nonresident Motorist Act, as originally codified from the Act of 1937 (Ga. L. 1937, p. 732 et seq.), affected nonresidents only, and it could not be applied since there was a resident and a nonresident suable as joint tortfeasors so as to change the venue of the action as against the resident defendant. Nor did the 1957 amendment (Ga. L. 1957, pp. 649, 650) have any such effect. *Tomlinson v. Sadler*, 99 Ga. App. 482, 109 S.E.2d 84 (1959).

Chapter not limited to use by residents. — Georgia Nonresident Motorist Act is not intended for the exclusive use of residents of the state. *Griffin v. Thomas*, 120 Ga. App. 362, 170 S.E.2d 437 (1969).

Nonresident of the state is entitled to utilize substituted service under the provisions of the Georgia Nonresident Motorist Act. *Griffin v. Thomas*, 120 Ga. App. 362, 170 S.E.2d 437 (1969).

Use against foreign nationals. — While the Georgia Nonresident Motorist Act is clearly in derogation of the common law, there is nothing in the statute restricting it to mere nonresident citizens of the United States, nor is there any language therein which would not allow it to be used against a foreign national. *Cheeley v. Fujino*, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Foreign motor common carriers are suable under the Georgia Nonresident Motorist Act. *Southeastern Truck Lines v. Rann*, 214 Ga. 813, 108 S.E.2d 561 (1959).

Chapter inapplicable in slander action. — Georgia Nonresident Motorist Act, which in effect authorizes judgments in personam against nonresidents who use the highways of this state with their automobiles, is in nowise pertinent to a case where a nonresident is being sued for slander. *Grimmett v. Barnwell*, 184 Ga. 461, 192 S.E. 191 (1937).

Cited in *Everett v. McCary*, 93 Ga. App. 474, 92 S.E.2d 112 (1956); *White v. Tittle*,

97 Ga. App. 185, 102 S.E.2d 689 (1958); *Smith v. Lamb*, 103 Ga. App. 157, 118 S.E.2d 924 (1961); *Coggins v. Rhodes*, 113 Ga. App. 837, 149 S.E.2d 834 (1966); *Morrow v. Henley*, 122 Ga. App. 646, 178 S.E.2d 308 (1970); *Fidelity & Cas. Co. v. Wilson*, 124 Ga. App. 444, 184 S.E.2d 21 (1971); *Railey v. State Farm Mut. Auto. Ins. Co.*, 129 Ga. App. 875, 201 S.E.2d 628 (1973); *Avis Rent A Car Sys. v. Rice*, 132 Ga. App. 857, 209 S.E.2d 270 (1974); *Rainwater v. Vazquez*, 133 Ga. App. 173, 210 S.E.2d 380 (1974); *Webb v. Oliver*, 133 Ga. App. 555, 211 S.E.2d 605 (1974); *Rosenbaum v. Dunn*, 136 Ga. App. 870, 222 S.E.2d 596 (1975).

RESEARCH REFERENCES

ALR. — Power of court, in exercise of discretion, to refuse to entertain action for nonstatutory tort occurring in another state or country, 32 ALR 6; 48 ALR2d 800.

Constitutionality, construction, and effect of statutes in relation to foreign-owned vehicles operating within state, 82 ALR 1091; 138 ALR 1499.

Constitutionality of statute providing for substituted or constructive service upon nonresident in action for tort in connection with automobile, 99 ALR 130.

Venue of action against nonresident motorist served constructively under statute, 38 ALR2d 1198.

Discretion of court to refuse to entertain

action for nonstatutory tort occurring in another state or country, 48 ALR2d 800.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 53 ALR2d 1164.

Tolling of statute of limitations during absence from state as affected by fact that party claiming benefit of limitations remained subject to service during absence or nonresidence, 55 ALR3d 1158.

Doctrine of *forum non conveniens*: assumption or denial of jurisdiction in action between nonresident individuals based upon tort occurring within forum state, 92 ALR3d 797.

40-12-1. Appointment of Secretary of State as agent for service of process on nonresidents; nonresident minor.

(a) The acceptance by any nonresident of this state, whether a person, firm, or corporation, of the rights and privileges conferred by the laws now or hereafter enforced in this state permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by any such nonresident anywhere within the territorial limits of this state, shall be deemed equivalent to the appointment by such nonresident of the Secretary of State of Georgia, or his successor in office, to be his true and lawful attorney in fact upon whom may be served all summonses or other lawful processes in any action or proceeding against any such nonresident growing out of any accident or collision in which any such nonresident may be involved by reason of the operation by him, for him, or under his control or direction, express or implied, of a motor vehicle anywhere within the territorial limits of

the State of Georgia, and said acceptance or operation shall be a signification of his agreement that any such process against him shall be of the same legal force and validity as if served upon him personally.

(b) If such nonresident motorist is a minor, then the minor and his parents or guardians shall be deemed to have assented to the appointment by such nonresident minor and his parents or guardians of the Secretary of State of Georgia, or his successor in office, to be the true and lawful attorney in fact for such minor and his parents or guardians, upon whom may be served any summons or other lawful process in any action or proceeding against such nonresident minor, his parents, or guardians growing out of any accident or collision in which any such nonresident minor may be involved by reason of the operation by him, for him, or under his control or direction, express or implied, of a motor vehicle anywhere within the territorial limits of the State of Georgia, and such acceptance or operation shall be a signification of his agreement or an agreement for him by his parents or guardians that any such process against him or them shall be of the same legal force and validity as if served upon him or them personally; and in this respect, the court wherein such action shall have been filed shall be authorized to appoint, upon motion duly made, a guardian ad litem for such minor for the purposes of defending such suit. (Ga. L. 1937, p. 732, § 1; Ga. L. 1964, p. 299, § 1; Ga. L. 1967, p. 800, § 1.)

Law reviews. — For article, "The Georgia Long Arm Statute: A Significant Advance in the Concept of Personal Jurisdiction," see 4 Ga. St. B.J. 13 (1967). For article summarizing law relating to jurisdiction and venue over domestic and foreign corporations in Georgia, see 21 Mer-

cer L. Rev. 457 (1970). For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

For comment, "Jurisdiction over Non-residents in Georgia: *Crowder v. Ginn*," see 17 Ga. L. Rev. 201 (1982).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

NONRESIDENT MOTORISTS

1. IN GENERAL

2. OPERATION OF AUTOMOBILE UNDER RIGHT OR PRIVILEGE

PROCEDURE

General Consideration

Nonresidents to whom chapter applicable. — Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., applies only to those persons who were in fact nonresidents at the time the nonresidents were exercising the rights and privileges referred to in O.C.G.A. § 40-12-1. *Bailey v.*

Hall, 199 Ga. App. 602, 405 S.E.2d 579 (1991).

Application to residents at time of tort. — In the context of the running of the statute of limitation, specifically O.C.G.A. § 9-3-33, and service of process issues, the Georgia's Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., does not apply when the defendant is a resi-

dent of Georgia at the time of the tort. *Andrews v. Stark*, 264 Ga. App. 792, 592 S.E.2d 438 (2003).

Legislative intent was to provide a method of service upon nonresident motorists as effective and certain as that employed in requiring residents of the state to answer actions for damages arising from collisions upon the public highways of the state. *Evans v. Brooks*, 93 Ga. App. 352, 91 S.E.2d 799 (1956).

Basis of constitutional validity of Ga. L. 1937, p. 732, § 1 (see O.C.G.A. § 40-12-1) is the right of the state, by the exercise of the state's police power, to prescribe regulations necessary for the public safety and order in the operation of motor vehicles. *Wood v. Wm. B. Reilly & Co.*, 40 F. Supp. 507 (N.D. Ga. 1941).

Ga. L. 1967, p. 800, § 1 (see O.C.G.A. § 40-12-1) gives the state in personam jurisdiction over parties who use the highways of the state and become involved in an accident or collision. *Rogers v. Hagen*, 445 F. Supp. 361 (N.D. Ga. 1978).

Ga. L. 1937, p. 732, § 1 (see O.C.G.A. § 40-12-1) does not apply to all roads and highways in the state because it does not apply to roads on military reservations. *Cabe v. Edwards*, 107 Ga. App. 551, 130 S.E.2d 803 (1963).

"Motor vehicle." — Term "motor vehicle" as used in Ga. L. 1967, p. 800, § 1 does not include a trailer without motive power not hitched to or being drawn by a motor vehicle. *O'Steen v. Boone*, 117 Ga. App. 174, 160 S.E.2d 229 (1968).

Cited in *Hirsch v. Shepherd Lumber Corp.*, 67 Ga. App. 474, 21 S.E.2d 110 (1942); *Beasley v. Elder*, 88 Ga. App. 419, 76 S.E.2d 849 (1953); *Horne v. Ewing*, 89 Ga. App. 300, 79 S.E.2d 339 (1953); *Allied Fin. Co. v. Prosser*, 103 Ga. App. 538, 119 S.E.2d 813 (1961); *Biddinger v. Fletcher*, 116 Ga. App. 532, 157 S.E.2d 764 (1967); *McKee v. Southern Ry.*, 50 F.R.D. 502 (N.D. Ga. 1970); *Taylor v. Clark*, 124 Ga. App. 766, 186 S.E.2d 159 (1971); *Unnever v. Stephens*, 142 Ga. App. 787, 236 S.E.2d 886 (1977); *McClure v. Kelley*, 154 Ga. App. 338, 268 S.E.2d 393 (1980); *Hardin v. Wright*, 172 Ga. App. 644, 323 S.E.2d 918 (1984); *Foster v. Morrison*, 177 Ga. App. 250, 339 S.E.2d 307 (1985).

Nonresident Motorists

1. In General

Effect of nonresidents using state highways. — Nonresident motorists, by using the highways of the state, not only consent to be sued in both state and federal courts of the state, but also waive the provisions of 28 U.S.C. § 1391(a) as to venue. *Burke v. Greer*, 114 F. Supp. 671 (M.D. Ga. 1953).

Ga. L. 1937, p. 732, § 1 (see O.C.G.A. § 40-12-1) allows a nonresident to be sued in a county where the accident took place. *Petroleum Carrier Corp. v. Carter*, 233 F.2d 402 (5th Cir. 1956).

Means of obtaining personal service on nonresident. — In a Georgia resident's suit against a South Carolina resident arising from a motor vehicle accident, the court disapproved the language in any case that the Non-Resident Motorists Act (NRMA), specifically O.C.G.A. § 40-12-1, was the proper method of obtaining service on nonresident motorists to the extent that this statement stated or implied that the NRMA was the exclusive method of obtaining personal service on nonresident motorists. *Farrie v. McCall*, 256 Ga. App. 446, 568 S.E.2d 603 (2002).

Person with in-state and out-of-state residences. — For the purposes of Ga. L. 1967, p. 800, § 1 (see O.C.G.A. § 40-12-1), a person can have more than one residence and if one of these residences is in Georgia, the defendant is not subject to service even though it is also proved that the defendant has an out-of-state residence as well. *Thompson v. Abbott*, 226 Ga. 353, 174 S.E.2d 904 (1970), overruled on other grounds, *Ogden Equip. Co. v. Talmadge Farms, Inc.*, 232 Ga. 614, 208 S.E.2d 459 (1974) and, overruled on other grounds as stated in, *Farrie v. McCall*, 256 Ga. App. 446, 568 S.E.2d 603 (2002); *Carroll v. Americal Corp.*, 207 Ga. App. 651, 428 S.E.2d 811 (1993).

"Nonresident" does not include Georgia resident at time of accident. — "Nonresident" under Ga. L. 1967, p. 800, § 1 (see O.C.G.A. § 40-12-1) cannot be a person who was a Georgia resident at the time the cause of action arose: in fact, the legislature's attempt to specifically

Nonresident Motorists (Cont'd)**1. In General (Cont'd)**

include such persons within the purview of the statute, Ga. L. 1957, p. 649, has been held unconstitutional as violative of U.S. Const., amend. 14. *Watwood v. Barber*, 70 F.R.D. 1 (N.D. Ga. 1975).

Foreign corporation with office in state. — When a foreign corporation has an office and place of business in a county in this state, which is in charge of an agent upon whom service of a suit against the corporation can be legally made, such corporation is not a "nonresident" of this state within the meaning of Ga. L. 1937, p. 732, § 1 (see O.C.G.A. § 40-12-1) so as to authorize a suit against the corporation in a county in this state where it has no office, place of business, or agent. *Hirsch v. Shepherd Lumber Corp.*, 194 Ga. 113, 20 S.E.2d 575, answer conformed to, 67 Ga. App. 474, 21 S.E.2d 110 (1942).

Use of nonresident's vehicle by child of nonresident. — When a parent, an Alabama resident, allowed a daughter unrestricted use of a motor vehicle while retaining title in the parent's name, and the daughter was in an accident in Georgia, the Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., permitted the exercise of personal jurisdiction over the nonresident motor vehicle owner alleged to be liable under the family purpose doctrine for damage resulting from the operation of an automobile in Georgia. *McCard v. Wright*, 170 Ga. App. 567, 317 S.E.2d 633 (1984).

2. Operation of Automobile Under Right or Privilege

Employment of resident driver by nonresident. — Employment by a nonresident of a Georgia citizen for sales work in Georgia when such employment contemplates the use of the resident's duly licensed and registered automobile in the conduct of the nonresident's business is not sufficient to bring the nonresident within the terms of Ga. L. 1937, p. 732, § 1 (see O.C.G.A. § 40-12-1) in a suit seeking recovery for injuries inflicted by such employee in the operation of the employee's automobile while engaged in the employee's sales duties. *Wood v. Wm.*

B. Reilly & Co., 40 F. Supp. 507 (N.D. Ga. 1941).

It was not the aim of the law makers, and none is expressed, to provide that so indirect an acceptance by the nonresident of the rights and privileges conferred by the laws of this state permitting the operation of motor vehicles as follows from the employment of a duly licensed and registered resident owner results in the equivalent appointment of an agent for service. *Wood v. Wm. B. Reilly & Co.*, 40 F. Supp. 507 (N.D. Ga. 1941).

Employment by a nonresident of a duly licensed and registered owner of an automobile is not such an acceptance by the nonresident of the rights and privileges conferred by the laws of Georgia permitting the operation of motor vehicles within the state as will be deemed equivalent to the appointment by the nonresident of the Secretary of State as agent to receive service of process in an action against the nonresident for injuries caused by a resident employee's or agent's negligent operation of the automobile within the state. *Myers v. Katz*, 67 Ga. App. 640, 21 S.E.2d 482 (1942).

Operation in this state of a motor vehicle registered under the laws of this state by a resident of this state who owns the motor vehicle, although the resident may be, in the operation of the motor vehicle, the servant and agent of a nonresident, is not the operation of the automobile under any right or privilege conferred by the laws of this state on a nonresident. *Myers v. Katz*, 67 Ga. App. 640, 21 S.E.2d 482 (1942).

Automobile not operated for nor under control of nonresident. — Service of process upon a nonresident whose automobile, operated by a third person, is involved in a collision in Georgia is invalid when it cannot be said that the automobile was operated for or under the control of the nonresident. *Hanft v. Allbright*, 132 Ga. App. 263, 208 S.E.2d 20 (1974).

Procedure

O.C.G.A. Ch. 12, T. 40 must be strictly construed and fully complied with before a trial court can obtain jurisdiction over the person of a nonresident defendant; in the absence of service in

conformity with the act, or the waiver of the act's requirements, any judgment rendered by the court is void. *Medlin v. Church*, 157 Ga. App. 876, 278 S.E.2d 747 (1981).

Defendant without knowledge of notice not subject to jurisdiction of court. — Filing of a certificate of the Secretary of State that the registered letters to the defendants, addressed to the defendant's "care general delivery," were returned to the defendant's marked "unclaimed," is not such a compliance with the law as would subject the defendants to the jurisdiction of a Georgia court, in the absence of evidence that the defendants knew of the presence of such letters in the post office of the city of their residence and refused to call for, receive, and sign for them. *Stone v. Sinkfield*, 70 Ga. App. 787, 29 S.E.2d 310 (1944).

Process naming defendants, not secretary of state, as agent. — Process is not void because it names defendants and not the Secretary of State as agent or attorney in fact for the defendants as the person to whom the process is directed and against whom the suit is filed. *Mull v. Taylor*, 68 Ga. App. 663, 23 S.E.2d 595 (1942).

Defendant may not refuse to accept service of notice sent by the Secretary of State and thus exculpate oneself. Proof that there was proper service on the Secretary of State, proper notice sent by the Secretary by registered mail to the defendant at the defendant's address, and refusal by the latter, amounts to proper service so as to give the court jurisdiction. *Liberty Mut. Ins. Co. v. Coburn*, 129 Ga. App. 520, 200 S.E.2d 146 (1973).

Notice received by employee or agent of defendant is sufficient. — When the notice is received by the defendant's employee or agent, and the latter fails to inform the defendant, the notice is nevertheless sufficient. *Liberty Mut. Ins. Co. v. Coburn*, 129 Ga. App. 520, 200 S.E.2d 146 (1973).

Nonresident does not acquire residence in agent's county. — Nonresident

does not by the mere appointment of an agent to accept service for the nonresident acquire a fixed residence in the county of such agent. The provision for the appointment of an attorney in fact relates to service, and not to venue. *Lloyd Adams, Inc. v. Liberty Mut. Ins. Co.*, 190 Ga. 633, 10 S.E.2d 46 (1940).

Service may not be made on representative of deceased nonresident. — Statute provides for substituted service only in actions against the user of the highways and does not extend to actions against the user's personal representative. Death revokes the agency of the state official so that substituted service cannot thus be made on the personal representative of the deceased nonresident. *Hendrix v. Jenkins*, 120 F. Supp. 879 (M.D. Ga. 1954).

Proper method of service on nonresident minor defendant. — Minor is not sui juris; accordingly, in order to perfect service upon a nonresident minor defendant under O.C.G.A. Ch. 12, T. 40, both the nonresident minor defendant and the minor's guardian must be served. *Medlin v. Church*, 157 Ga. App. 876, 278 S.E.2d 747 (1981).

Running of time for removal. — When statutory service of process is made on the defendant through service on the Secretary of State, the time for removal does not run as of the date of the statutory service on the Secretary of State, but as of the time when the defendant actually receives a copy of the initial pleading. *Barber v. Willis*, 246 F. Supp. 814 (N.D. Ga. 1965).

Waiver of jurisdictional defects by appearance. — When a petition brought under the Georgia Nonresident Motorist Act sufficiently alleged the trial court's jurisdiction of the subject matter of the suit, the defendant waived any jurisdictional defects as to the defendant's person by appearing through the defendant's attorneys and pleading to the merits. *Garver v. Smith*, 90 Ga. App. 892, 84 S.E.2d 693 (1954).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Constitutionality of statute providing for substituted or constructive service upon nonresident in action for tort in connection with operation of automobile, 35 ALR 951; 57 ALR 1239; 99 ALR 130.

Construction, application, and effect of statutes providing for constructive or substituted service of process upon nonresident motorists, 82 ALR 768; 96 ALR 594; 125 ALR 457; 138 ALR 1464; 155 ALR 333; 53 ALR2d 1164.

Who is subject to constructive or substituted service of process under statutes

providing for such service on nonresident motorists, 155 ALR 333; 53 ALR2d 1164.

Venue of action against nonresident motorist served constructively under statute, 38 ALR2d 1198.

What is "motor vehicle" or the like within statute providing for constructive or substituted service of process on nonresident motorists, 48 ALR2d 1283.

Place or type of motor vehicle accident as affecting applicability of statute providing for constructive or substituted service upon nonresident motorist, 73 ALR2d 1351.

Airplane or other aircraft as "motor vehicle" or the like within statute providing for constructive or substituted service of process on nonresident motorist, 36 ALR3d 1387.

40-12-2. How service on nonresident made.

Service of process upon a nonresident pursuant to Code Section 40-12-1 shall be made by serving a copy of the complaint or other pleading with summons attached thereto on the Secretary of State, his duly authorized agent, or his successor in office, along with a copy of the affidavit to be submitted to the court pursuant to this Code section. Such service shall be sufficient service upon any such nonresident, provided that notice of such service and a copy of the complaint and process are forthwith sent by registered or certified mail or statutory overnight delivery by the plaintiff to the defendant, if his address is known, and the defendant's return receipt and the plaintiff's affidavit of compliance with this Code section are appended to the summons or other process and filed with the summons, complaint, and other papers in the case in the court wherein the action is pending. The Secretary of State shall charge and collect a fee as set out in Code Section 45-13-26 for service of process on him under this Code section. (Ga. L. 1937, p. 732, § 2; Ga. L. 1959, p. 113, § 1; Ga. L. 1965, p. 231, § 1; Ga. L. 1983, p. 1474, § 2; Ga. L. 1984, p. 22, § 40; Ga. L. 1989, p. 364, § 2; Ga. L. 2000, p. 1589, § 3.)

Law reviews. — For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

JUDICIAL DECISIONS

Ga. L. 1959, p. 113, § 1 (see O.C.G.A. § 40-12-2) is in derogation of the com-

mon law, and must be strictly construed and fully complied with before a court of a

state other than that of the defendant's residence may obtain jurisdiction of the defendant's person. *Roland v. Shelton*, 106 Ga. App. 581, 127 S.E.2d 497 (1962); *Babb v. Cook*, 203 Ga. App. 437, 417 S.E.2d 63 (1992); *Swanigan v. Leroux*, 240 Ga. App. 550, 524 S.E.2d 244 (1999).

Status as nonresident. — When an individual has more than one residence, and one residence is in Georgia, the individual is not a nonresident for purposes of the Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq.; nor is a former Georgia resident who moves out of state after the action arose a nonresident under the Act. *Whitten v. Richards*, 240 Ga. App. 719, 523 S.E.2d 906 (1999).

Requirements for jurisdiction. — In order for a court to obtain jurisdiction over the person of a defendant in an action brought against a nonresident motorist so as to render valid a judgment in personam against such defendant, two things must be done: (1) service of the process and copies of the petition or other pleading with process attached thereto must be had upon the Secretary of State of Georgia, or the Secretary's duly authorized agent; and (2) notice of such service and a copy of the petition and process must be sent by registered mail to the defendant. *Roland v. Shelton*, 106 Ga. App. 581, 127 S.E.2d 497 (1962); *Medlin v. Church*, 157 Ga. App. 876, 278 S.E.2d 747 (1981).

Under O.C.G.A. § 40-12-2: (1) service on the Secretary of State and (2) sending notice of this service and copy of the petition and process to the defendant by registered mail are essential to jurisdiction over the defendant. *Rielly v. Crook*, 112 Ga. App. 334, 145 S.E.2d 110 (1965); *Watts v. Kessler*, 133 Ga. App. 231, 211 S.E.2d 177 (1974).

When the defendant was not personally served with process, nor by certified mail, nor given any written notice of the pendency of an action, service on the Secretary of State was defective. Only when the notice authorized by statute is actually received can substituted service become the equivalent of personal service. *Brown v. Meyer*, 222 Ga. App. 133, 473 S.E.2d 521 (1996).

Defendant's actual knowledge of the complaint prior to the time of filing by

virtue of the defendant's receipt of a letter containing the complaint did not satisfy the requirements of O.C.G.A. § 40-12-2. *Pringle v. Jaganauth*, 240 Ga. App. 65, 522 S.E.2d 560 (1999), overruled on other grounds, *Farrie v. McCall*, 256 Ga. App. 446, 568 S.E.2d 603 (2002).

When the nonresident's address was not known, the nonresident's return receipt, indicating that the nonresident received the notice, could not have been filed; therefore, because service by certified mail was not possible, service upon the Secretary of State under O.C.G.A. § 40-12-2 was insufficient and there was no personal jurisdiction. *Guerrero v. Tellez*, 242 Ga. App. 354, 529 S.E.2d 639 (2000).

Compliance with Hague Convention. — In a diversity action resulting from an automobile accident, the plaintiff's service of a copy of the summons and complaint on the Georgia Secretary of State and sending a copy by registered mail to the defendant, a Canadian resident, pursuant to the Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., satisfied the requirements of the Hague Convention. *Curcuruto v. Cheshire*, 864 F. Supp. 1410 (S.D. Ga. 1994).

Burden on plaintiff to investigate defendant's location. — Burden is on the plaintiff to investigate and learn where the defendant may be located. *Cheek v. Norton*, 106 Ga. App. 280, 126 S.E.2d 816 (1962).

To construe Ga. L. 1959, p. 113, § 1 (see O.C.G.A. § 40-12-2) to mean that there is no burden at all on the plaintiff to ascertain the defendant's whereabouts, and leave it merely to chance and the plaintiff's conscience whether the plaintiff provides an address for service of notice or not, would contravene the minimum requirements of due process. *Cheek v. Norton*, 106 Ga. App. 280, 126 S.E.2d 816 (1962).

Assumptions upon which jurisdiction rests. — Jurisdiction rests upon assumption that the defendant received notice of the action and an opportunity to defend. There must be at least an attempt by the plaintiff to give the defendant notice of service in the manner set forth in the statute. *Cheek v. Norton*, 106 Ga. App. 280, 126 S.E.2d 816 (1962).

Reasonable probability of receipt of notice. — Both the statute and the facts concerning the mailing of the notice must be such as to show within a reasonable probability that the defendant in fact received notice. *Cheek v. Norton*, 106 Ga. App. 280, 126 S.E.2d 816 (1962).

Proof which raises a reasonable probability that notice was received by the defendant is sufficient in the absence of a showing by the defendant that such notice was not in fact received. *Roland v. Shelton*, 106 Ga. App. 581, 127 S.E.2d 497 (1962).

When the reasonable probability requirements are met, the fact that the nonresident defendant did not in fact receive actual notice, especially when failure to do so is the fault of such defendant, will not always deprive the courts of jurisdiction. *Dunn v. Royal Bros. Co.*, 111 Ga. App. 322, 141 S.E.2d 546 (1965).

Conditions barring jurisdiction. — Filing of a certificate of the Secretary of State that the registered letters to the defendants, addressed to the defendants "care general delivery," were returned to the Secretary marked "unclaimed," is not such a compliance with O.C.G.A. § 40-12-2 as would subject the defendants to the jurisdiction of a Georgia court, in the absence of evidence that the defendants knew of the presence of such letters in the post office of the city of the defendants' residence and refused to call for, receive, and sign for the letters. *Stone v. Sinkfield*, 70 Ga. App. 787, 29 S.E.2d 310 (1944).

When a return receipt is not filed showing delivery of the letter to a nonresident defendant the court does not acquire jurisdiction over the person of the defendant unless the letter was in fact delivered to the nonresident, or the nonresident had notice of the letter or the action against the defendant, or the defendant refused delivery of the letter addressed to the defendant. *Rielly v. Crook*, 112 Ga. App. 334, 145 S.E.2d 110 (1965).

Trial court's finding of insufficient service of process was not an abuse of discretion as, although a driver served an employee of a moving company by substituted service of a renewal complaint upon the Georgia Secretary of State, the

driver's return receipt for service upon the employee was not signed by the employee and the employee averred that the employee did not live at that address at that time; there was no evidence that the driver attempted to serve the employee at the address listed in the driver's complaint and an affidavit of compliance was not appended to the summons or other process and was not properly filed with the trial court. *Nolan v. Jowers*, 280 Ga. App. 815, 635 S.E.2d 211 (2006).

Delivery in fact accomplishes service. — If letter is in fact delivered to the addressee, or if the addressee has notice of the letter or the action against the addressee, or if the addressee refuses delivery of the letter to the addressee, service has been accomplished. *Watts v. Kegler*, 133 Ga. App. 231, 211 S.E.2d 177 (1974).

Compliance with notice provisions accomplishes service. — When notice is duly given to the defendant as required by the provisions of the Nonresident Motorist Act (see O.C.G.A. § 40-12-1 et seq.), irrespective of whether the defendant actually received such notice, and when the statute is otherwise complied with, due and legal service has been perfected. *Dunn v. Royal Bros. Co.*, 111 Ga. App. 322, 141 S.E.2d 546 (1965).

When the plaintiff strictly complied with the requirements of O.C.G.A. § 40-12-2, notice and service on the defendant was sufficient since the defendant did not receive the summons and complaint because of the defendant's own non-collecting of the defendant's mail. *Bowers v. Winter*, 228 Ga. App. 530, 492 S.E.2d 296 (1997).

Trial court erred in holding that a nonresident driver's failure to receive actual notice of a lawsuit invalidated service as the driver never denied that the driver received two notices from postal authorities that the certified letter was available to be claimed. *Tate v. Hughes*, 255 Ga. App. 511, 565 S.E.2d 853 (2002).

Presumption of receipt is rebuttable. — While proof that notices were mailed raises a presumption that the defendant received the notices, this presumption is a rebuttable one. *Roland v. Shelton*, 106 Ga. App. 581, 127 S.E.2d 497 (1962).

Proof of service showing essentials of jurisdiction is rebuttable by evidence that the defendant did not in fact receive the notice. *Rielly v. Crook*, 112 Ga. App. 334, 145 S.E.2d 110 (1965); *Watts v. Kegler*, 133 Ga. App. 231, 211 S.E.2d 177 (1974).

Provision of affidavit by plaintiff's counsel. — Affidavit of compliance with Ga. L. 1965, p. 231, § 1 (see O.C.G.A. § 40-12-2) may be given by the plaintiff's counsel, rather than the plaintiffs themselves, since the attorney is the agent of the client for the purpose of the litigation in question. *Locklear v. Morgan*, 127 Ga. App. 326, 193 S.E.2d 208 (1972).

No provision for service by publica-

tion. — There is no provision in the Non-resident Motorist Act (see O.C.G.A. § 40-12-1 et seq.) for service on a nonresident defendant by publication. *National Sur. Corp. v. Hernandez*, 120 Ga. App. 307, 170 S.E.2d 318 (1969).

Cited in *Mull v. Taylor*, 68 Ga. App. 663, 23 S.E.2d 595 (1942); *Everett v. McCary*, 93 Ga. App. 474, 92 S.E.2d 112 (1956); *Norris Candy Co. v. Dixie Hwy. Express, Inc.*, 102 Ga. App. 665, 117 S.E.2d 250 (1960); *Liberty Mut. Ins. Co. v. Coburn*, 129 Ga. App. 520, 200 S.E.2d 146 (1973); *Livingston v. Taylor*, 284 Ga. App. 638, 644 S.E.2d 483 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Construction, application, and effect of statutes providing for constructive or substituted service of process on

nonresident motorists, 82 ALR 768; 96 ALR 594; 125 ALR 457; 138 ALR 1464; 155 ALR 333; 53 ALR2d 1164.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 155 ALR 333; 53 ALR2d 1164.

40-12-3. Venue of actions against nonresidents; nonresident joint defendant.

All actions brought under this chapter relating to the use of the highways of this state by nonresident motorists shall be brought in the county in which the accident or injury occurred or the cause of action originated, or in the county of the residence of the plaintiff, as the plaintiff in such action may elect, if the plaintiff in such action is a resident of the State of Georgia; and, if the plaintiff in such action is a nonresident of the State of Georgia, the action shall be brought in the county in this state in which the accident or injury occurred or the cause of action originated; and the courts in such counties having jurisdiction of tort actions shall have jurisdiction of all such nonresident users in actions arising under this chapter. Where an action for damages is brought against a resident of this state, any nonresident involved in the same accident or collision and who is suable under this chapter may be joined as a defendant in the county wherein the resident defendant is suable, and the jurisdiction of the court of and over such nonresident joint defendant shall not be affected or lost by reason of the fact that the jury returns a verdict in favor of such resident joint defendant although the accident, injury, or cause of action did not originate in the county wherein the action is brought. (Ga. L. 1937, p. 732, § 3; Ga. L. 1947, p. 305, § 2; Ga. L. 1955, p. 650, § 1; Ga. L. 1959, p. 120, § 1.)

Law reviews. — For article discussing aspects of third party practice (impleader) under the Georgia Civil Practice Act, see 4 Ga. St. B.J. 355 (1968). For article summarizing law relating to jurisdiction and venue over domestic and foreign corporations in Georgia, and service therein, see 21 Mercer L. Rev. 457 (1970). For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973). For article surveying trial practice and procedure, see 34 Mercer L. Rev. 299 (1982).

For note discussing problems with venue in Georgia, and proposing statutory

revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

For comment on *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980) and *Rush v. Savchuk*, 444 U.S. 320, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980), regarding minimum contacts and state jurisdiction, see 15 Ga. L. Rev. 19 (1980). For comment, "Jurisdiction over Nonresidents in Georgia: *Crowder v. Ginn*," see 17 Ga. L. Rev. 201 (1982).

JUDICIAL DECISIONS

Constitutionality. — It is not a violation of the equal protection clause to allow a nonresident motorist to be sued in any county of the state at the election of the plaintiff. *Lloyd Adams, Inc. v. Liberty Mut. Ins. Co.*, 190 Ga. 633, 10 S.E.2d 46 (1940).

Joint defendant sued with manufacturer "resident defendant." — Since the rupture of a tire was alleged to have "involved" a manufacturer in a collision, the driver of the truck using the tire was also allowed to be sued as a joint defendant with the manufacturer, which was a "resident defendant" under O.C.G.A. § 40-12-3. *Gault v. National Union Fire Ins. Co.*, 208 Ga. App. 134, 430 S.E.2d 63 (1993).

Nonresident against nonresident. — Nonresident may bring an action and secure service under the Nonresident Motorist Act (see O.C.G.A. § 40-12-1 et seq.) against a nonresident user of the highways of this state, a resident of the same state as the plaintiff, for the recovery of damages for injuries sustained as a result of the operation of the defendant's automotive vehicle on the highways of this state. *Griffin v. Thomas*, 120 Ga. App. 362, 170 S.E.2d 437 (1969).

Use against foreign nationals. — There is nothing in the statute restricting the statute to mere nonresident citizens of the United States, nor is there any language therein which would not allow the statute to be used against a foreign national. *Cheeleley v. Fujino*, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Foreign corporation with in-state office not nonresident. — When a foreign corporation has an office and place of business in a county in this state, which office is in the charge of an agent upon whom service of a suit against the corporation can be legally made, such corporation is not a "nonresident" of this state within the meaning of Ga. L. 1937, p. 732, § 3 (see O.C.G.A. § 40-12-3) so as to authorize a suit against the corporation in a county in this state when the corporation has no office, place of business, or agent. *Hirsch v. Shepherd Lumber Corp.*, 194 Ga. 113, 20 S.E.2d 575, answer conformed to, 67 Ga. App. 474, 21 S.E.2d 110 (1942).

Resident may choose county for filing action. — Ga. L. 1959, p. 120, § 1 (see O.C.G.A. § 40-12-3) allows a resident of Georgia at the time of the incident to choose, as a matter of convenience at the time of filing the resident's action, a proper forum in the county where the incident took place or a proper forum in the county where the resident is then residing. *Oliver v. Carter*, 118 Ga. App. 353, 163 S.E.2d 757 (1968).

Courts with jurisdiction over actions. — Venue for actions under the Nonresident Motorist Act (see O.C.G.A. § 40-12-1 et seq.) is in courts which have jurisdiction of tort and criminal actions. *Aldrich v. Johns*, 93 Ga. App. 787, 92 S.E.2d 804 (1956).

Joint action against resident and nonresident. — Ga. L. 1947, p. 305, § 2 (see O.C.G.A. § 40-12-3) does not authorize the bringing of a joint tort action

against a resident of Georgia and a non-resident in a county wherein the resident defendant does not reside. *Hays v. Jones*, 81 Ga. App. 597, 59 S.E.2d 404 (1950).

Venue is proper over a nonresident third-party defendant when the third-party complaint is sued in the county of residence of the third-party plaintiff (the defendant in the primary action). *Chapman v. Latex Filler & Chem. Co.*, 135 Ga. App. 665, 218 S.E.2d 671 (1975).

Differing venue classifications for resident and nonresident actions. — Since the venue of tort actions against residents is based upon the residence of the defendant, it is apparent that the venue of actions against nonresidents could not be determined on the same basis. The situation of the nonresident being distinctly different from that of the resident, it was proper for the General Assembly to classify nonresidents separately for the purpose of determining venue. *Lloyd Adams, Inc. v. Liberty Mut. Ins. Co.*, 190 Ga. 633, 10 S.E.2d 46 (1940).

Defendant's appearance is waiver of jurisdictional defects. — When a petition brought under the Nonresident Motorist Act (see O.C.G.A. § 40-12-1 et seq.) sufficiently alleged the trial court's jurisdiction of the subject matter of the suit, the defendant waived any jurisdictional defects as to the defendant's person by appearing through the defendant's attorneys and pleading to the merits. *Garver v. Smith*, 90 Ga. App. 892, 84 S.E.2d 693 (1954).

An action, brought by a resident against nonresidents, neither in the county where the action arose nor in the county of the plaintiff's residence, confers jurisdiction of the subject matter upon the court if it is named in the Nonresident Motorist Act (see O.C.G.A. § 40-12-1 et seq.), and the defendant's plea to the merits without filing a plea to the jurisdiction as to the person is a waiver of the lack of such jurisdiction. *Stanford v. Davidson*, 105 Ga. App. 742, 125 S.E.2d 720 (1962); *Biddinger v. Fletcher*, 224 Ga. 501, 162 S.E.2d 414 (1968).

Only defendant's conduct can waive venue. — Conduct which will amount to waiver of venue is that of the

defendant alone and nothing a plaintiff might do can change the legal consequences which attach to that conduct. *Biddinger v. Fletcher*, 224 Ga. 501, 162 S.E.2d 414 (1968).

Submission to jurisdiction of court. — When a nonresident voluntarily institutes a suit in a county in this state the nonresident submits oneself, for all purposes of that suit, to the jurisdiction of the courts of the county in which the suit is pending. *Biddinger v. Fletcher*, 224 Ga. 501, 162 S.E.2d 414 (1968).

Trial in improper county does not invalidate judgment. — Venue relates to procedure, and not to jurisdiction, and the fact an action is tried in a county other than that declared by the statute as the proper county for its trial does not go to the jurisdiction and does not invalidate the judgment. *Biddinger v. Fletcher*, 224 Ga. 501, 162 S.E.2d 414 (1968).

Action against nonresident motor common carrier. — While it is provided that an action against a nonresident motor common carrier may be brought in the county where the cause of action or some part thereof arose, this does not have the effect of restricting or limiting the venue in that respect. This provision contemplates an action arising out of a transaction in Georgia, but even then the statute does not require that the action be brought in the county where the action arose. *Parker v. Ryder Truck Lines*, 150 Ga. App. 163, 257 S.E.2d 18 (1979).

Even though a nonresident interstate motor common carrier was registered in Georgia and had a registered agent for service of process, venue of a personal injury action against the carrier and non-resident driver was proper only in the county in which the accident occurred. *Southern Drayage, Inc. v. Williams*, 216 Ga. App. 721, 455 S.E.2d 418 (1995).

Cited in *Pate v. Taylor Chem. Co.*, 88 Ga. App. 127, 76 S.E.2d 131 (1953); *Wade v. Hopper*, 209 Ga. 802, 76 S.E.2d 403 (1953); *Wade v. Hopper*, 89 Ga. App. 87, 78 S.E.2d 809 (1953); *Horne v. Ewing*, 89 Ga. App. 300, 79 S.E.2d 339 (1953); *Garver v. Smith*, 90 Ga. App. 892, 84 S.E.2d 693 (1954); *Arnold v. Chupp*, 93 Ga. App. 583, 92 S.E.2d 239 (1956); *Rogers v. Johnson*, 94 Ga. App. 666, 96 S.E.2d 285 (1956);

Petroleum Carrier Corp. v. Carter, 233 F.2d 402 (5th Cir. 1956); Hole v. Duncan, 105 Ga. App. 725, 125 S.E.2d 731 (1962); Atlanta Metallic Casket Co. v. Mosby Truck Serv., Inc., 107 Ga. App. 677, 131

S.E.2d 590 (1963); Key v. Hobbs, 133 Ga. App. 863, 212 S.E.2d 496 (1975); Gowdy v. Schley, 317 Ga. App. 693, 732 S.E.2d 774 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 141 et seq., 212, 238. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 974, 1005, 1006, 1207.

C.J.S. — 61 C.J.S., Motor Vehicles, §§ 1116 et seq., 1127 et seq.

ALR. — Power of court, in exercise of discretion, to refuse to entertain action for

nonstatutory tort occurring in another state or country, 32 ALR 6; 48 ALR2d 800.

Venue of action against nonresident motorist served constructively under statute, 38 ALR2d 1198.

Discretion of court to refuse to entertain action for nonstatutory tort occurring in another state or country, 48 ALR2d 800.

40-12-4. Records to be kept by Secretary of State.

The Secretary of State or his successor in office shall keep a record of all processes, which record shall show the day and hour of service upon him. When the return receipt for any such registered notice shall be returned to the Secretary of State, he shall deliver it to the plaintiff on request and keep a record of the date of its receipt by him and of its delivery to the plaintiff. (Ga. L. 1937, p. 732, § 5.)

RESEARCH REFERENCES

ALR. — Constitutionality of statute providing for substituted or constructive service upon nonresident in action for tort

in connection with operation of automobile, 35 ALR 951; 57 ALR 1239; 99 ALR 130.

40-12-5. Certificate of service to be sent to clerk of court; time for answering complaint.

The Secretary of State or his successor in office, within three days from the date of the service upon him of the summons or process provided for in this chapter, shall certify to the court in which the action is pending that the summons or process has been filed in his office as provided for in this chapter. Upon receipt of such certification by the clerk of the court in which the action is pending, the complaint shall be answered within 30 days after service of the summons and complaint upon him, unless the time for the appearance of the defendant shall be extended by an order of the court in order to allow the defendant ample opportunity to be heard. (Ga. L. 1937, p. 732, § 6.)

JUDICIAL DECISIONS

Cited in *Stone v. Sinkfield*, 70 Ga. App. 787, 29 S.E.2d 310 (1944).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Statutory service on nonresident motorist: return receipts, 95 ALR2d 1033.

40-12-6. Continuances.

The court in which an action brought against a nonresident pursuant to this chapter is pending shall cause any such action to be continued as long as may be necessary to afford the defendant reasonable opportunity to defend the action. (Ga. L. 1937, p. 732, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

40-12-7. Designation of employees to perform functions of Secretary of State.

The Secretary of State is authorized and empowered to designate such of his employees as he deems necessary for the purposes of accepting service as provided in this chapter and performing all other duties and functions as provided in this chapter for the Secretary of State. Such designation shall be in writing, and all actions by any such person designated shall be as valid and binding as though performed by the Secretary of State himself. The power and authority of any such person so designated shall cease immediately upon such person's ceasing to be an employee of the Secretary of State. (Ga. L. 1957, p. 65, § 1.)

JUDICIAL DECISIONS

Cited in *Norris Candy Co. v. Dixie Hwy. Express, Inc.*, 102 Ga. App. 665, 117 S.E.2d 250 (1960).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 155 ALR 333; 53 ALR2d 1164.

40-12-8. Service upon personal representative.

If any person upon whom service of process is authorized by this chapter shall die, or be or become insane, or shall not be sui juris, service shall be made upon his administrator, executor, guardian, or other personal representative in the manner prescribed in this chapter, if such administrator, executor, guardian, or personal representative is not a resident of this state. (Ga. L. 1957, p. 649, § 3.)

JUDICIAL DECISIONS

Ga. L. 1957, p. 649, § 3 (see O.C.G.A. § 40-12-8) is not unconstitutional. The legislature exercised the legislature's police power in regulating the use of the state highways by providing that when a nonresident motorist subject to suit in Georgia dies, service shall be made upon the nonresident's personal representative, if not a resident of Georgia. *Peterson v. Wade*, 222 Ga. 805, 152 S.E.2d 745 (1966).

Proper method of service on non-

resident minor defendant. — Minor is not sui juris; accordingly, in order to perfect service upon a nonresident minor defendant under O.C.G.A. Ch. 12, T. 40, both the nonresident minor defendant and the minor's guardian must be served. *Medlin v. Church*, 157 Ga. App. 876, 278 S.E.2d 747 (1981).

Cited in *Focht v. American Cas. Co.*, 103 Ga. App. 138, 118 S.E.2d 737 (1961).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Action or proceeding which directly or indirectly seeks to establish liability of, or to recover judgment against, a nonresident executor or administrator, or other fiduciary, as to in personam or in rem, as regards acquisition of jurisdiction under constructive or substituted service of process, 136 ALR 621.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 155 ALR 333; 53 ALR2d 1164.

Constitutionality and construction of statute authorizing constructive or substituted service of process on, and continuation of pending action against, foreign representative of deceased nonresident driver of motor vehicle, arising out of accident occurring in state, 18 ALR2d 544.

CHAPTER 13

PROSECUTION OF TRAFFIC OFFENSES

Article 1

Uniform Traffic Citation and Complaint Form

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- 40-13-1. Form to be developed by commissioner of driver services; function; identifying number.
- 40-13-2. System of accountability; procedures for use and issuance.
- 40-13-2.1. Signature on citations required; effect of failure to sign; exemption for out-of-state drivers; electronic capture of signature.
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- 40-13-28. Appeal to superior court; bond.
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- 40-13-30. Authority to make arrests.
- 40-13-31. Arresting fees.
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Sec.

- 40-13-33. Limitation on habeas corpus challenge of misdemeanor traffic conviction.

Article 3

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- 40-13-51. Appointment of clerk or deputy clerk; bond.
- 40-13-52. Traffic offense cards; contents.
- 40-13-53. Release of arrested person upon service of citation and complaint.
- 40-13-54. Disposition of original and copies of citation and complaint.
- 40-13-55. Cash bonds permitted.
- 40-13-56. Officer not to accept cash bond.
- 40-13-57. Taking of cash bond where officer doubts that arrested person will appear.
- 40-13-58. Failure to appear after giving cash bond as admission of guilt; forfeiture of bond; order to stand trial not precluded.
- 40-13-59. Records to be kept by traffic violations bureau; filing of citation and complaint; time for posting cash bond; when bond forfeited.
- 40-13-60. Disposition of traffic violations; jurisdiction of bureau.
- 40-13-61. Where records maintained; accusations of traffic violations not to be entered on misdemeanor docket; when action maintainable on accusation of traffic violation.
- 40-13-62. When bureau loses jurisdiction; issuance of accusation and bench warrant.
- 40-13-63. Penalty for failure to appear.
- 40-13-64. Suspended sentence division; collection of fines.

Cross references. — Cancellation, suspension, and revocation of drivers' licenses, § 40-5-50 et seq.

ARTICLE 1

UNIFORM TRAFFIC CITATION AND COMPLAINT FORM

Administrative rules and regulations. — Uniform Traffic Citations, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Department of Driver Services, Chapter 375-3-4.

JUDICIAL DECISIONS

Jurisdiction of appeal from city court. — When uniform traffic citation and complaint form was used to charge an offense in a constitutional city court, but solicitor (now district attorney) subsequently amended the form to allege a violation of a city ordinance, jurisdiction

of an appeal lay in the superior court rather than the Court of Appeals. *Parnell v. City of Atlanta*, 173 Ga. App. 602, 327 S.E.2d 569 (1985).

Cited in *Collins v. State*, 154 Ga. App. 651, 269 S.E.2d 509 (1980).

RESEARCH REFERENCES

ALR. — Right of motorist stopped by police officers for traffic offense to be informed at that time of his federal consti-

tutional rights under *Miranda v. Arizona*, 25 ALR3d 1076.

40-13-1. Form to be developed by commissioner of driver services; function; identifying number.

The commissioner of driver services shall develop a uniform traffic citation and complaint form for use by all law enforcement officers who are empowered to enforce the traffic laws and ordinances in effect in this state. Such form shall serve as the citation, summons, accusation, or other instrument of prosecution of the offense or offenses for which the accused is charged, and as the record of the disposition of the matter by the court before which the accused is brought, and shall contain such other matter as the commissioner shall provide. Each such form shall have a unique identifying number which shall serve as the docket number for the court having jurisdiction of the accused. (Ga. L. 1972, p. 1148, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 2005, p. 334, § 22-1/HB 501.)

JUDICIAL DECISIONS

Uniform traffic citations as accusations. — When the state filed uniform traffic citations with the court, the citations functioned as an accusation, commenced the prosecution, and established

the term of court at which the right to a speedy trial attached. *Clark v. State*, 236 Ga. App. 130, 510 S.E.2d 616 (1998), aff'd, 271 Ga. 519, 520 S.E.2d 694 (1999).

Defendant's demand for a speedy trial

was not timely filed when it was filed in the next term following the filing of the formal accusation, rather than in the next term following the filing of the uniform traffic citation. *Clark v. State*, 271 Ga. 519, 520 S.E.2d 694 (1999), affirming *Clark v. State*, 236 Ga. App. 130, 510 S.E.2d 616 (1998).

Information written on the defendant's uniform traffic citation functioned as a valid order or citation, issued by police, for the defendant to appear before a municipal judge at a later date to answer the charge against the defendant. *Beaman v. City of Peachtree City*, 256 Ga. App. 62, 567 S.E.2d 715 (2002).

Prosecution by formal accusation. — Oath and attestation upon the uniform traffic citation issued under O.C.G.A. § 40-13-1 is apparently an "affidavit," developed by the Commissioner of Public Safety for the prosecution of traffic offense cases; this "ticket" alone suffices to prosecute a traffic violation. But when the arresting officer neglects to sign, under oath and before an authorized magistrate, the "arresting officer's certification" on the citation attesting that the officer reasonably believed the defendant committed the offense, prosecution by formal accusation, pursuant to O.C.G.A. § 17-7-71, is the correct procedure. *Evans v. State*, 168 Ga. App. 716, 310 S.E.2d 3 (1983).

Limitations on prosecution. — When uniform traffic citations were issued within two years of the date offenses occurred and, later, the state filed amended accusations, the trial court did not err in refusing to dismiss charges on the ground that the statute of limitations expired because the amended accusations did not constitute the commencement of a new prosecution and there had been no final disposition of the previously filed accusations. *Prindle v. State*, 240 Ga. App. 461, 523 S.E.2d 44 (1999).

Uncompleted jurat portion of officer's certification. — Probate court's denial of the defendant's motion to quash a traffic citation which was defective because the jurat portion of the arresting officer's certification had not been completed was harmless error. *King v. State*, 176 Ga. App. 137, 335 S.E.2d 439 (1985), overruled on other grounds, *Copeland v.*

White, 178 Ga. App. 644, 344 S.E.2d 436 (1986).

Accusation can be specific when affidavit general. — Accusation cannot be broader than the affidavit, but, as the greater includes the lesser, if the affidavit is general, the accusation can be specific. *McCann v. State*, 158 Ga. App. 202, 279 S.E.2d 499 (1981).

Purpose of the identifying number is to provide the person receiving the citation or that person's attorney a means of locating the docketed case. *Hyatt v. State*, 134 Ga. App. 703, 215 S.E.2d 698 (1975).

Demand for speedy trial. — Defendant's demand for a speedy trial upon receipt of uniform traffic citation and complaint form was not premature since such a citation itself contains the accusation, the preferring of which is a prerequisite to a demand for speedy trial. *Majia v. State*, 174 Ga. App. 432, 330 S.E.2d 171, *aff'd*, 254 Ga. 660, 333 S.E.2d 834 (1985).

Mere issuance of a uniform traffic citation, without subsequently filing the citation with the clerk of the courts, is not sufficient to authorize the entry of a filed demand for speedy trial pursuant to O.C.G.A. § 17-7-170(a). *Ghai v. State*, 219 Ga. App. 479, 465 S.E.2d 498 (1995).

Transcript of proceedings. — In misdemeanor cases, it is discretionary with the trial court as to whether the proceedings are transcribed. Thus, absent a demand for a transcript, prepared at the request of the demanding party, the reporting of such a case is not required as a matter of law. *Ward v. State*, 188 Ga. App. 372, 373 S.E.2d 65 (1988).

Venue not affected by use of citation form. — Uniform traffic citations are not evidence, and thus cannot provide the factual basis necessary to establish venue. *Graves v. State*, 269 Ga. 772, 504 S.E.2d 679 (1998), overruled on other grounds, *Jones v. State*, 272 Ga. 900, 537 S.E.2d 80 (2000), reversing *Graves v. State*, 227 Ga. App. 628, 490 S.E.2d 111 (1997).

Conviction not affected by use of old citation form. — Validity of the defendant's conviction for driving under the influence was not affected by the fact that the uniform traffic citation issued to the defendant was not the form then in

use, when the citation showed on the citation's face that the citation had been approved by the Commissioner of Public Safety as required by O.C.G.A. § 40-13-1. *Hudson v. State*, 261 Ga. 414, 405 S.E.2d 495 (1991).

Cited in *Smith v. State*, 140 Ga. App. 339, 231 S.E.2d 91 (1976); *Holland v. State*, 151 Ga. App. 189, 259 S.E.2d 187 (1979); *Boss v. State*, 152 Ga. App. 169, 262 S.E.2d 527 (1979); *Cargile v. State*, 244 Ga. App. 871, 262 S.E.2d 87 (1979);

McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981); *Weaver v. State*, 179 Ga. App. 641, 347 S.E.2d 295 (1986); *Dixon v. State*, 196 Ga. App. 15, 395 S.E.2d 577 (1990); *Poppell v. State*, 209 Ga. App. 91, 432 S.E.2d 573 (1993); *State v. Black*, 213 Ga. App. 331, 444 S.E.2d 368 (1994); *State v. Gerbert*, 267 Ga. 169, 475 S.E.2d 621 (1996); *Millan v. State*, 231 Ga. App. 121, 497 S.E.2d 664 (1998); *Roberts v. State*, 280 Ga. App. 672, 634 S.E.2d 790 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of uniform traffic citation.

— Because a citation serves as the formal accusation against a convicted driver, local jurisdictions may transmit traffic ticket information electronically to the Department of Public Safety, but not as a substitute for sending the citation copy. The uniform traffic citation must also be forwarded to the department. 1991 Op. Att'y Gen. No. U91-2.

All law officers must use the uniform traffic citation when enforcing traffic laws and ordinances. 1973 Op. Att'y Gen. No. 73-18.

Certification. — Certification contained within the uniform traffic citation

is not required to be sworn to before a judicial officer; an oath administered by a notary public is sufficient. 1985 Op. Att'y Gen. No. 85-5.

There is no statutory requirement for a certification as provided for by the uniform traffic citation. 1985 Op. Att'y Gen. No. 85-5.

Since the certification is part of the citation, it should be completed as near to the time of arrest as possible and at least prior to the filing of the citation with the clerk of court; generally, this should be done within 48 hours of the arrest. 1985 Op. Att'y Gen. No. 85-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 140. 20 Am. Jur. 2d, Courts, §§ 54, 55.

C.J.S. — 60 C.J.S., Motor Vehicles, § 29 et seq.

40-13-2. System of accountability; procedures for use and issuance.

The Board of Public Safety, by rule and regulation, shall establish a system of accountability for all traffic citations and complaints, and it shall also provide the procedures governing the use and issuance of such citations and complaints. (Ga. L. 1972, p. 1148, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 15 et seq.

40-13-2.1. Signature on citations required; effect of failure to sign; exemption for out-of-state drivers; electronic capture of signature.

(a) A person who is issued a citation as provided in this chapter or Code Section 17-6-11, relating to display of driver's license in lieu of bail, shall sign the citation to acknowledge receipt of the citation and of his or her obligation to appear for trial. The officer shall advise the person that signing the citation is not an admission of guilt and that failure to sign will result in the person having to post a cash bond. If the person refuses to sign the citation, it shall constitute reasonable cause to believe that the person will not appear at trial and the officer may bring the person before a judicial officer or traffic violations bureau to post a bond as is otherwise provided by law.

(b) The provisions of subsection (a) of Code Section 17-6-11 shall not apply to a person in possession of a driver's license issued by a state or foreign country that has not entered into a reciprocal agreement regarding the operation of motor vehicles with this state as provided in Chapter 5 of Title 40, which provides for the suspension of a driver's license by the other state or foreign country of a person who fails to appear for trial of a traffic offense committed in this state.

(c) The signature of any person to whom a citation is issued may be captured electronically. (Code 1981, § 40-13-2.1, enacted by Ga. L. 2000, p. 1313, § 5; Ga. L. 2010, p. 932, § 25/HB 396.)

JUDICIAL DECISIONS

Procedures after failure to sign. — Trial court did not err in granting the defendant's motion to suppress evidence because the defendant's arrest was illegal. After electing to issue a traffic citation, a deputy could not make a custodial arrest of the defendant when the defendant refused to sign the citation; the deputy had

to follow the procedures in O.C.G.A. § 40-13-2.1(a) of advising the defendant that signing the citation would not be an admission of guilt or that, if the defendant refused to sign, the defendant would need to post a cash bond. *State v. Torres*, 290 Ga. App. 804, 660 S.E.2d 763 (2008).

40-13-3. Traffic offenses triable on complaint without indictment except in superior courts; report of disposition.

Except for offenses tried in the superior courts, all other courts having jurisdiction of the offense may proceed with the adjudication of the offenses contained within the complaint without the necessity of filing an indictment or other accusation in order to bring the accused to trial. The judge or clerk of each court before whom a person accused of such an offense is brought shall promptly report the final disposition of the case to the Department of Driver Services. Notwithstanding the reporting requirements of this Code section, the Department of Driver

Services may by rule or regulation relieve the judge or clerk of each such court of the responsibility of reporting those offenses which do not result in convictions or adjudications of guilt or pleas of nolo contendere. (Ga. L. 1972, p. 1148, §§ 2, 4; Ga. L. 1992, p. 1118, § 2; Ga. L. 1992, p. 2785, § 29; Ga. L. 2000, p. 951, § 7A-1; Ga. L. 2005, p. 334, § 22-2/HB 501.)

Cross references. — Trial of misdemeanor motor vehicle violations upon citation, O.C.G.A. § 17-7-71. Trial upon ci-

tation in municipal court, O.C.G.A. § 36-32-10.2.

JUDICIAL DECISIONS

Guilty plea under First Offender Act. — Defendant's pleas of guilty to traffic offenses under the First Offender Act, O.C.G.A. § 42-8-60 et seq., were properly considered to be a final disposition under O.C.G.A. § 40-13-3 requiring reporting to the Department of Public Safety. *Salomon v. Earp*, 190 Ga. App. 405, 379 S.E.2d 217 (1989), overruled on other grounds, *Pender v. Witcher*, 196 Ga. App. 856, 397 S.E.2d 193 (1990).

Demand for speedy trial. — Defendant's demand for a speedy trial upon receipt of a uniform traffic citation and complaint form was not premature since such a citation itself contains the accusation, the preferring of which is a prerequisite to a demand for speedy trial. *Majia v. State*, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985).

Filing accusation not commencement of new prosecution. — Filing of an accusation in no way constituted commencement of a new prosecution and, therefore, the prosecution was not barred by the statute of limitations. *Davis v. State*, 208 Ga. App. 845, 432 S.E.2d 229 (1993).

Validity of citation. — That an indictment of a defendant was later necessary under O.C.G.A. §§ 17-7-70(a) and 40-13-3 did not destroy the validity of a formerly

issued uniform traffic citation; the citation for felony vehicular homicide was not void, but expired and was superseded. *State v. Perkins*, 276 Ga. 621, 580 S.E.2d 523 (2003).

Commencement of prosecution. — Indictment filed in superior court was not the "commencement" of a new prosecution against the defendant for statute of limitations purposes as the indictment was issued in the superior court after the defendant had the defendant's case involving misdemeanor traffic charges transferred from the county probate court to the superior court; rather, the Uniform Traffic Citation issued to the defendant on the day the alleged offenses occurred commenced the prosecution against the defendant, and, thus, the prosecution against the defendant was brought within the two-year limitations period applicable to the defendant's case. *Bishop v. State*, 261 Ga. App. 445, 582 S.E.2d 571 (2003).

Cited in *Holland v. State*, 151 Ga. App. 189, 259 S.E.2d 187 (1979); *Stone v. State*, 151 Ga. App. 531, 260 S.E.2d 405 (1979); *Boss v. State*, 152 Ga. App. 169, 262 S.E.2d 527 (1979); *Collins v. State*, 154 Ga. App. 651, 269 S.E.2d 509 (1980); *McSears v. State*, 247 Ga. 48, 273 S.E.2d 847 (1981); *Weaver v. State*, 179 Ga. App. 641, 347 S.E.2d 295 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Section applies to recorders' court. — Recorders' court, being a court with jurisdiction over traffic offenses, must comply with the reporting requirements of Ga. L. 1972, p. 1148, §§ 2 and 4 (see

O.C.G.A. § 40-13-3). 1973 Op. Att'y Gen. No. 73-18.

First-offender treatment immaterial to administrative handling of report of conviction. — Upon receipt of

report of conviction, i.e., finding of guilt or entry of plea of guilty, or plea of nolo contendere, the Department of Public Safety should administratively handle the report as it would any other report of conviction notwithstanding the fact that the defendant was able to lessen any harsh criminal consequences of the defendant's actions by availing oneself of first offender treatment. 1982 Op. Att'y Gen. No. 82-64.

Nolo contendere plea. — Once the Department of Public Safety is in receipt of a report of "an accepted plea of nolo contendere", the Department should administratively handle the nolo contendere plea as provided for in O.C.G.A. Ch. 5, T. 40 without regard to whether a fine was or was not imposed by the trial court. 1982 Op. Att'y Gen. No. 82-64.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 954 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, § 1504 et seq.

40-13-4. Fees of officers.

Nothing contained in this article shall be construed to prohibit or to deny to any officer or official of any court any fees prescribed for his duties and services in connection with the offenses provided for in this article. (Ga. L. 1972, p. 1148, § 4.)

JUDICIAL DECISIONS

Cited in *Holland v. State*, 151 Ga. App. 189, 259 S.E.2d 187 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 140. 20 Am. Jur. 2d, Courts, §§ 54, 55.

ARTICLE 2

ARRESTS, TRIALS, AND APPEALS

Cross references. — Judicial procedure relating to juvenile traffic offenses, §§ 15-11-49, 15-11-50.

JUDICIAL DECISIONS

Courts from which direct appeal would lie. — Courts named in O.C.G.A. Art. 2, Ch. 13, T. 40 from which direct appeal would lie are probate courts, municipal courts, and police courts. The act provides that police courts shall be con-

strued to include mayor's courts or recorder's courts, or like municipal courts by whatever names called. *Henson v. DeKalb County*, 158 Ga. App. 348, 280 S.E.2d 393 (1981).

RESEARCH REFERENCES

ALR. — Entrapment to commit traffic offense, 34 ALR4th 1167.

40-13-20. “Municipal courts” defined.

As used in this article, the term “municipal courts” shall be construed to include municipal courts of the incorporated municipalities of this state. (Ga. L. 1937-38, Ex. Sess., p. 558, § 3; Ga. L. 1987, p. 3, § 40; Ga. L. 1994, p. 604, § 1.)

40-13-21. General powers and jurisdiction of probate and municipal courts; assistance of the district attorney or solicitor.

(a) The probate courts and municipal courts of the incorporated towns and cities of this state, acting by and through the judges or presiding officers thereof, shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence, in the manner required by law, upon defendants violating any and all criminal laws of this state relating to traffic upon the public roads, streets, and highways of this state where the penalty for the offense does not exceed that of the grade of misdemeanor.

(b) The probate court shall have jurisdiction to issue warrants, try cases, and impose sentence thereon in all misdemeanor cases arising under the traffic laws of this state in all counties of this state in which there is no city, county, or state court, provided the defendant waives a jury trial. Notwithstanding any provision of law to the contrary, all municipal courts are granted jurisdiction to try and dispose of misdemeanor traffic offenses arising under state law except violations of Code Section 40-6-393 and to impose any punishment authorized for such offenses under general state law, whether or not there is a city, county, or state court in such county, if the defendant waives a jury trial and the offense arises within the territorial limits of the respective jurisdictions as now or hereafter fixed by law.

(c) In any traffic misdemeanor trial, a judge of the probate court, upon his or her own motion, may request the assistance of the district attorney of the circuit in which the court is located or solicitor-general of the state court of the county to conduct the trial on behalf of the state. If, for any reason, the district attorney or solicitor-general is unable to assist, the district attorney or solicitor-general may designate a member of his or her staff to conduct the trial on behalf of the state. (Ga. L. 1937-38, Ex. Sess., p. 558, §§ 1-3; Ga. L. 1953, Nov.-Dec. Sess., p. 83, § 2; Ga. L. 1962, p. 3146, § 2; Ga. L. 1971, p. 2299, § 1; Ga. L. 1982, p. 2107, § 44; Ga. L. 1987, p. 3, § 40; Ga. L. 1989, p. 354, § 1; Ga. L. 1989,

p. 604, § 1; Ga. L. 1992, p. 909, § 1; Ga. L. 1992, p. 980, § 1; Ga. L. 1996, p. 748, § 21.)

Cross references. — Provisions regarding jurisdiction of recorder's, mayor's, and other police courts to try traffic offenses, § 40-5-124.

Editor's notes. — Ga. L. 1996, p. 748, § 27, not codified by the General Assembly, provides: "Notwithstanding any other provision of law, an Act approved February 11, 1854 (Ga. L. 1854, p. 281), which abolished the office of solicitor of the City Court of Savannah, now the State Court of Chatham County, and transferred responsibility for the prosecution of criminal cases in said court to the solicitor general (now the district attorney) for the Eastern Judicial Circuit is confirmed. It shall be the duty of said district attorney to prosecute all criminal actions in said state court until otherwise specifically provided by law."

Ga. L. 1996, p. 748, § 28, not codified by the General Assembly, provides: "The provisions of this Act shall not affect the powers, duties, or responsibilities of the district attorney as successor to the office of solicitor general under the constitution, statutes, and common law of this state as provided by Code Section 15-18-1."

Ga. L. 1996, p. 748, § 29, not codified by

the General Assembly, provides: "Except as otherwise authorized in this Act, on and after July 1, 1996, any reference in general law or in any local Act to the solicitor of a state court shall mean and shall be deemed to mean the solicitor-general of such state court."

Ga. L. 1996, p. 748, § 30, not codified by the General Assembly, provides: "The provisions of paragraph (3) of Code Section 15-18-62, relating to the qualifications for the office of solicitor-general of a state court, shall apply to any person elected or appointed to such office after July 1, 1996. Any person holding such office on July 1, 1996, may continue to hold such office for the remainder of the term to which such person was elected or appointed notwithstanding the fact that such person has not been a member of the State Bar of Georgia for three years if such person is otherwise qualified to hold the office of solicitor-general."

Law reviews. — For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 196 (1989).

JUDICIAL DECISIONS

Constitutionality. — In providing that municipal courts shall have jurisdiction over ordinance violations and such other jurisdiction as provided by law, Ga. Const. 1983, Art. VI, Sec. I, Para. I authorizes the General Assembly to vest municipal courts with jurisdiction over state misdemeanor offenses. *Kolker v. State*, 260 Ga. 240, 391 S.E.2d 391 (1990).

Construed with O.C.G.A. § 1-1-2. — Under the statutory provisions contained in O.C.G.A. § 40-13-21, it was in 1937, and continues to be, the intent of the legislature to vest all municipal courts with jurisdiction over state misdemeanor traffic laws (citing 1945 Georgia Constitution). *Whaley v. State*, 260 Ga. 384, 393 S.E.2d 681 (1990).

Municipal court jurisdiction over

misdemeanor traffic offenses. — Power of municipal courts to try and dispose of misdemeanor traffic offenses is conditioned upon the defendant's waiver of the defendant's right to a jury trial. *Kolker v. State*, 260 Ga. 240, 391 S.E.2d 391 (1990).

Jurisdiction to issue warrant not limited. — Right and jurisdiction of the court to issue a warrant is not limited to any particular instances. *Cooper v. Lunsford*, 203 Ga. 166, 45 S.E.2d 395 (1947).

Probate court lost the court's jurisdiction to hear and decide misdemeanor traffic offenses by operation of law upon the effective date of the creation of a state court in the county. *Fausnaugh v. State*, 244 Ga. App. 263, 534 S.E.2d 554 (2000).

Waiver of jury trial in probate court. — In those probate court cases in which there is no record that a timely objection to trial without a jury was made, the right to a jury trial is waived, and the issue cannot be raised for the first time on appeal. *Nicholson v. State*, 261 Ga. 197, 403 S.E.2d 42 (1991), but see *Davis v. State*, 197 Ga. App. 746, 399 S.E.2d 554 (1990).

Waiver of jury in recorder's court. — When no evidence appeared indicating the defendant's objection to proceeding without a jury on a prior charge of driving under the influence tried in the recorder's court, the defendant waived the defendant's right to a jury trial on that charge,

and the trial court did not err by considering the valid prior judgment in sentencing the defendant as a third-time violator. *Kolker v. State*, 200 Ga. App. 72, 406 S.E.2d 514, cert. denied, 200 Ga. App. 896, 406 S.E.2d 514 (1991).

Cited in *Mathis v. Rowland*, 208 Ga. 571, 67 S.E.2d 760 (1951); *City of Adairsville v. Barton*, 159 Ga. App. 810, 285 S.E.2d 581 (1981); *Kolker v. State*, 193 Ga. App. 306, 387 S.E.2d 597 (1989); *Zornes v. State*, 262 Ga. 757, 426 S.E.2d 355 (1993); *Mauldin v. Burnette*, 89 F. Supp. 2d 1371 (M.D. Ga. 2000); *Lockett v. State*, 257 Ga. App. 412, 571 S.E.2d 192 (2002); *State v. Rigdon*, 284 Ga. App. 785, 645 S.E.2d 17 (2007).

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Jurisdiction over cases arising under traffic laws. — Ga. L. 1937-38, Ex. Sess., p. 558, §§ 1-3 (see O.C.G.A. § 40-13-21) limits the jurisdiction of the probate court to cases arising under traffic laws of the state. 1958-59 Op. Att'y Gen. p. 67.

In counties having no city court (now state court), the probate court has jurisdiction to dispose of misdemeanor cases arising by virtue of traffic laws of this state. 1948-49 Op. Att'y Gen. p. 483; 1950-51 Op. Att'y Gen. p. 21.

Probate court, having jurisdiction over traffic offenses pursuant to O.C.G.A. §§ 15-9-30(b)(8) and 40-13-21, has jurisdiction over violations of county traffic ordinances. 1995 Op. Att'y Gen. No. U95-1.

Jurisdiction over traffic cases. — Probate court may exercise state judicial power over misdemeanor traffic offenses occurring within the corporate limits of a municipal corporation where the charter of the municipal corporation authorizes a municipal court but no such court is in existence. The arresting officer in a misdemeanor traffic case is responsible for returning those charges to the proper court with jurisdiction to hear the matter, but, if the citation is erroneously returned to the incorrect court, that court should promptly act to transfer the matter to a court with jurisdiction to consider the charges. 1989 Op. Att'y Gen. No. U89-30.

Power of probate court not prohibited because of municipal court existence. — O.C.G.A. § 40-13-29 does not prohibit the probate court from exercising state judicial power in any county simply because of the existence of a municipal court within the corporate limits of a municipal corporation within that county. 1989 Op. Att'y Gen. No. U89-30.

Authority of mayor's court when there is no city or county court, see 1954-56 Op. Att'y Gen. p. 489; 1960-61 Op. Att'y Gen. p. 567.

Municipal courts, police courts, mayors' courts or recorders' courts have jurisdiction when the offense occurs within the incorporated limits of the municipality in a county which has no city or county court and the defendant waives a jury trial. 1967 Op. Att'y Gen. No. 67-157.

Municipal court possesses jurisdiction to try all misdemeanor cases originating within the corporate limits of the city which concern violations of laws relating to traffic upon the public roads, streets, and highways. 1973 Op. Att'y Gen. No. 73-29.

Traffic laws enumerated. — Municipal court has jurisdiction over the offenses of driving under the influence of intoxicating liquor or drugs, driving a vehicle without a driver's license or with a revoked, suspended, or cancelled driver's license, driving a vehicle without a state inspection sticker or with an expired state in-

spection sticker, driving a vehicle without a state license plate or with an illegal or expired state license plate, and other traffic offenses occurring on the public roads of the municipality. 1967 Op. Att'y Gen. No. 67-157.

Municipal court possesses jurisdiction to try violations of laws requiring annual inspections of motor vehicles and prohibiting driving under the influence of intoxicating liquor or drugs. 1973 Op. Att'y Gen. No. 73-29.

No authority over licensing and registration violations. — Probate courts have no authority or jurisdiction in violations arising under licensing and registration provisions because those provisions are not "traffic laws" as contemplated by Ga. L. 1962, p. 3146, § 2 1965-66. Op. Att'y Gen. No. 65-18 (see O.C.G.A. § 40-13-21).

No jurisdiction of public drunkenness offense. — Since the offense of public drunkenness does not involve "traffic upon the public roads, streets, and highways of this state ...," a probate court is without jurisdiction to try cases or to accept cash bonds for the offense of public drunkenness. 1984 Op. Att'y Gen. No. U84-13.

Authority to issue warrants. — If there is no city or county court in a county, then the judge of the probate court would have authority to issue warrants for the violation of traffic laws. 1954-56 Op. Att'y Gen. p. 109.

Judge of the probate court may issue a warrant for arrest for traffic violations and a justice of the peace may issue a warrant for traffic offenses if a warrant has not otherwise been issued by the judge of the probate court. 1965-66 Op. Att'y Gen. No. 65-57.

Probate judges may issue arrest warrants only in certain traffic cases and for peace officers accused of any offense in the performance of their duties. 1983 Op. Att'y Gen. No. U83-13.

Authority to appoint attorney to prosecute. — In a misdemeanor traffic case before a county probate court when the probate judge either has not requested the assistance of the district attorney or has requested assistance but the district attorney has refused to conduct the trial

or to designate a member of his or her staff to conduct the trial, the board of commissioners is free to provide an attorney to prosecute the case. Further, in a case under the jurisdiction of the probate court other than a misdemeanor traffic case, the board of commissioners is also free to provide an attorney to prosecute the case. 2001 Op. Att'y Gen. No. U2001-2.

Warrant for failure to appear. — Judge of the probate court does not have authority to issue a bench warrant, but the judge does have authority to issue an arrest warrant for a person who does not appear to answer a traffic violation citation issued to that person. 1975 Op. Att'y Gen. No. U75-65.

Named probate court may issue warrant ordering apprehension of individual charged with violating traffic laws who fails to appear in court on the date and at the time specified in the citation upon which he or she was arrested. 1980 Op. Att'y Gen. No. U80-58.

Burden on defendant to notify court if jury trial desired. — Probate court has an affirmative burden to obtain a written waiver of a jury trial prior to proceeding to dispose of a pending traffic case on the merits. However, the defendant has an affirmative burden to notify the court if a jury trial is desired. 1980 Op. Att'y Gen. No. 80-135.

Limitation on imposition of fines. — Maximum fines that may be imposed by the probate court under Ga. L. 1937-38, Ex. Sess., p. 558, §§ 1-3 (see O.C.G.A. § 40-13-21) would be those fines specifically provided by statute for the particular misdemeanor involved in the trial. 1948-49 Op. Att'y Gen. p. 484.

Assessment of costs. — When a probate court hears cases involving traffic cases, costs should be assessed in accordance with former Code 1933, § 24-1716. 1970 Op. Att'y Gen. No. U70-102 (see O.C.G.A. § 15-9-60).

In traffic offense cases tried in the probate court, costs which are properly incurred may be recovered from an insolvent cost fund when there is neither a fine nor a bond forfeiture. 1969 Op. Att'y Gen. No. 69-511.

Costs applicable to traffic cases brought in probate courts pursuant to O.C.G.A.

§ 40-13-21 or when a judge of the probate court issues warrant in traffic cases pursuant to O.C.G.A. § 17-4-23 are those enumerated in O.C.G.A. § 15-9-60 for public safety patrol trials plus costs allowed for other services actually performed. 1981 Op. Att'y Gen. No. U81-36.

Appeal to superior court. — O.C.G.A. § 40-13-28 requires that a misdemeanor traffic defendant who has been convicted in the probate court and who wishes to appeal to the superior court is to be remanded to the custody of the sheriff pending the posting of an appellate bond only if the defendant has been sentenced

to a term of imprisonment. 1989 Op. Att'y Gen. No. U89-30.

Private practice of part-time district attorney. — District attorney may appoint a part-time assistant district attorney to prosecute traffic cases in the probate court if requested by the judge of the probate court. If the assistant is compensated solely by county funds, the assistant can engage in the private practice of law except as a conflict of interest may arise due to that person's responsibilities as an assistant district attorney. 1991 Op. Att'y Gen. No. U91-6.

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 124 et seq.

40-13-22. Jurisdiction over offenses under Code Section 40-2-8.

(a) Notwithstanding any provision of the law to the contrary, any person, firm, or corporation charged with an offense under Code Section 40-2-8 may be tried in any municipal court of any municipality if the offense occurred within the corporate limits of such municipality. Such courts are granted the jurisdiction to try and dispose of such cases. The jurisdiction of such courts shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases. Any fines and forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality. Any person, firm, or corporation charged with any offense under this Code section shall be entitled to request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(b) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Ga. L. 1931, p. 213, § 2; Code 1933, § 68-9901; Ga. L. 1977, p. 1039, § 1; Ga. L. 1987, p. 3, § 40.)

OPINIONS OF THE ATTORNEY GENERAL

Probate court is without jurisdiction to try the offense of operating a motor vehicle with expired license tags. 1958-59 Op. Att'y Gen. p. 67.

Former Code 1933, § 68.9901 was not a traffic law of Georgia, but rather was part of the revenue statutes of the state and hence the probate court would have no

jurisdiction to try offenses under such section. 1958-59 Op. Att'y Gen. p. 67 (see O.C.G.A. § 40-13-22).

40-13-23. Waiver of jury trial; withdrawal of waiver.

(a) No court defined in this article shall have the power to dispose of traffic misdemeanor cases as provided in this article unless the defendant shall first waive in writing a trial by jury. If the defendant wishes a trial by jury, he shall notify the court and, if reasonable cause exists, he shall be immediately bound over to the court in the county having jurisdiction to try the offense, wherein a jury may be impaneled. Where a cash bond, property bond, or driver's license in lieu of bond has been posted, the bond shall be transferred to the court assuming jurisdiction, and the defendant shall not be required to post a new bond by the court assuming jurisdiction.

(b) No waiver of a trial by jury may be withdrawn when such waiver has been interposed for the purpose of delay. Except with approval of the court, no waiver of a trial by jury may be withdrawn after the commencement of the trial or the filing of motions on behalf of the defendant, whichever comes first. (Ga. L. 1937-38, Ex. Sess., p. 558, § 4; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 329, § 1; Ga. L. 1992, p. 2785, § 29; Ga. L. 1996, p. 1279, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma

was inserted following "property bond" in the third sentence of subsection (a).

JUDICIAL DECISIONS

Written waiver required. — Language of O.C.G.A. § 40-13-23 is clear and unambiguous: without a written waiver of trial by jury, the probate court is without authority to proceed to disposition of the case. An oral waiver at a recorded hearing is not sufficient compliance with the statute. *Snellings v. State*, 194 Ga. App. 552, 391 S.E.2d 36 (1990), but see *Nicholson v. State*, 261 Ga. 197, 403 S.E.2d 42 (1991).

When a review of the record reveals that the appellant did not sign the jury trial waiver, the probate court was without authority to dispose of the case. Even though there is no indication that the waiver-of-jury-trial issue was raised in the superior court, this is a matter which goes to the subject matter jurisdiction of the probate court and the right to attack the judgment as a nullity is not waived by the failure to attack the judgment before. *Davis v. State*, 197 Ga. App. 746, 399

S.E.2d 554 (1990), but see *Nicholson v. State*, 261 Ga. 197, 403 S.E.2d 42 (1991).

Waiver of jury in recorder's court. — When no evidence appeared indicating the defendant's objection to proceeding without a jury on a prior charge of driving under the influence tried in the recorder's court, the defendant waived the right to a jury trial on that charge, and the trial court did not err by considering the valid prior judgment in sentencing the defendant as a third-time violator. *Kolker v. State*, 200 Ga. App. 72, 406 S.E.2d 514, cert. denied, 200 Ga. App. 896, 406 S.E.2d 514 (1991).

Waiver may not be raised on appeal absent objection. — In those probate court cases in which there is no record that a timely objection to trial without a jury was made, the right to a jury trial is waived, and the issue cannot be raised for the first time on appeal. *Nicholson v.*

State, 261 Ga. 197, 403 S.E.2d 42 (1991), but see *Davis v. State*, 197 Ga. App. 746, 399 S.E.2d 554 (1990).

Superior court erred in remanding the case to the municipal court for further determination of the waiver of jury trial issue when the record failed to show that the defendant had objected to proceeding without a jury in the municipal court. *Doggett v. City of Manchester*, 201 Ga. App. 425, 411 S.E.2d 288, cert. denied, 201 Ga. App. 903, 411 S.E.2d 288 (1991); *Shannon v. State*, 205 Ga. App. 831, 424 S.E.2d 51, cert. denied, 205 Ga. App. 901, 424 S.E.2d 51 (1992).

Georgia Supreme Court has held that a written waiver of a right to trial by jury is itself waived if the defendant proceeds to trial without objecting to being tried without a jury. *Giles v. City of Locust Grove*, 203 Ga. App. 164, 416 S.E.2d 758, cert. denied, 203 Ga. App. 906, 416 S.E.2d 758 (1992).

Defendant waived the defendant's rights under O.C.G.A. § 40-13-23 when the record fails to reflect that the defendant interposed any objection in the municipal court to being tried without a jury, and the record contains a finding by the municipal court judge that the defendant and defense counsel were specifically advised by the court of the defendant's right to trial by jury. *Giles v. City of Locust Grove*, 203 Ga. App. 164, 416 S.E.2d 758, cert. denied, 203 Ga. App. 906, 416 S.E.2d 758 (1992).

Cited in *Newmans v. State*, 65 Ga. App. 288, 16 S.E.2d 87 (1941); *Dodd v. State*, 85 Ga. App. 589, 69 S.E.2d 784 (1952); *Kendall v. State*, 196 Ga. App. 760, 396 S.E.2d 927 (1990); *Walton v. State*, 197 Ga. App. 263, 398 S.E.2d 221 (1990); *Puckett v. State*, 239 Ga. App. 582, 521 S.E.2d 634 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Burden on defendant to notify court. — Probate court has an affirmative burden to obtain a written waiver of a jury trial prior to proceeding to dispose of a pending traffic case on the merits. However, the defendant has an affirmative burden to notify the court if a jury trial is desired. 1980 Op. Att'y Gen. No. 80-135.

Removal or appeal bond not condition for transfer. — Municipal judge is not authorized to require a removal or appeal bond as a condition of transferring a case to superior court under O.C.G.A. § 40-13-23. 1984 Op. Att'y Gen. No. U84-44.

Disposition of fines in cases transferred between courts. — Municipality cannot collect and retain fines resulting from cases transferred from municipal court to superior court pursuant to

O.C.G.A. § 40-13-23, since fines imposed by the superior court must be paid into the county treasury. 1984 Op. Att'y Gen. No. U84-44.

Phrase "if reasonable cause exists" in subsection (a) of O.C.G.A. § 40-13-23 provides that, if a defendant has notified the court that the defendant desires a trial by jury, the court must review the case and, if reasonable cause exists to prosecute the matter against the defendant, the court is to bind the charges over to the court having jurisdiction to try the offense and the ability to provide the defendant's requested trial by a jury. If reasonable cause to continue the prosecution does not exist, the municipal court may dismiss the charges at that point. 1989 Op. Att'y Gen. No. U89-23.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 968.

C.J.S. — 15A C.J.S., Common Law, § 1.

40-13-24. Indictment or accusation not required; docket.

An indictment or accusation shall not be required against a defendant under this article, but a citation and complaint specifically setting out the charge shall be issued. The court shall keep a docket on which shall be plainly kept the name and address of the defendant, the nature of the offense in brief, the date when brought before the court, and the final disposition of the case with the date thereof. Such docket shall be the same in each probate court handling traffic misdemeanor cases and shall be on a form to be prescribed by the Department of Law. Such docket shall be paid for from the treasury of the county in which such court is located. Municipal courts may use the dockets ordinarily in use by them in the trial of other cases or, in the discretion of the court, may adopt the docket provided in this Code section for probate courts. (Ga. L. 1937-38, Ex. Sess., p. 558, § 6; Ga. L. 1987, p. 3, § 40.)

JUDICIAL DECISIONS

Law prior to section. — At the time of the passage of Ga. L. 1937-38, Ex. Sess., p. 558, § 6, the law of this state contemplated that every arrest, either for a misdemeanor or felony, would be made under a warrant. *Cooper v. Lunsford*, 203 Ga. 166, 45 S.E.2d 395 (1947) (see O.C.G.A. § 40-13-24).

Insolvent costs fund authorized. — Having construed Ga. L. Ex. Sess. 1937-38, p. 558, as contemplating the creation of an insolvent costs fund in order to pay the sheriff costs in accordance with its provisions, and the Act by its terms making the ordinary (now probate judge) an officer of the court and specifying the amount of costs the ordinary (now probate

judge) is to receive in each case, the General Assembly necessarily intended that the ordinary (now probate judge) would participate in the insolvent costs fund. *Cooper v. Lunsford*, 203 Ga. 166, 45 S.E.2d 395 (1947).

Demand for speedy trial. — Defendant's demand for a speedy trial upon receipt of a uniform traffic citation and complaint form was not premature since such a citation itself contains the accusation, the preferring of which is a prerequisite to a demand for speedy trial. *Majia v. State*, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985).

Cited in *McSears v. State*, 247 Ga. 48, 273 S.E.2d 847 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Costs permitted for entering case on docket. — An ordinary (now probate judge) who tries cases arising out of the violation of traffic laws shall be allowed the fee provided for by Ga. L. 1937-38, Ex. Sess., p. 558, § 5 (see O.C.G.A.

§ 40-13-25) when the ordinary (now probate judge) enters a case on the docket pursuant to the ordinary's duties as set forth in Ga. L. 1937, Ex. Sess., p. 558, § 6 (see O.C.G.A. § 40-13-24). 1968 Op. Att'y Gen. No. 68-213.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 1017, 1018, 1028. 62B Am. Jur. 2d, Process, § 1.

C.J.S. — 21 C.J.S., Courts, §§ 242, 311.

40-13-25. Costs.

The costs in any case disposed of under this article shall be as provided in Code Section 15-9-60. In case a defendant refuses to waive a trial by jury and is bound over to another court, the costs shall await the final disposition of the case. (Ga. L. 1937-38, Ex. Sess., p. 558, § 5.)

JUDICIAL DECISIONS

Cited in *Sikes v. Charlton County*, 103 Ga. App. 251, 119 S.E.2d 59 (1961).

OPINIONS OF THE ATTORNEY GENERAL

Ordinary allowed fee for entering case on docket. — Ordinary (now probate judge) who tries cases arising out of the violation of traffic laws shall be allowed a fee when the ordinary enters a case on the docket pursuant to the ordinary's duties as set forth in Ga. L.

1937-38, Ex. Sess., p. 558, § 6. 1968 Op. Att'y Gen. No. 68-213 (see O.C.G.A. § 40-13-24).

Justice of the peace is entitled to costs for the issuance of a warrant. — 1948-49 Op. Att'y Gen. p. 49.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 1 et seq.

C.J.S. — 21 C.J.S., Courts, § 242.

40-13-26. How sentences for traffic offenses served; disposition of fines and costs; definition of "urban interstate system".

(a) Defendants who plead guilty or who are convicted under this article shall be required to serve their sentences in such manner as is provided for by law in misdemeanor cases. In case a fine is imposed and paid, the officers of court, where on fee basis, shall first be paid their costs arising in such case. After the payment of all costs, the remainder of such fine shall be paid into the county treasury in the event the case is disposed of by the probate court; if the case is disposed of by the municipal court of an incorporated municipality, the remainder of such fine or fines shall be paid into the treasury of the municipality where the court is located, except that where such courts have jurisdiction beyond the corporate limits of a municipality, and the offense occurs outside the municipality, the fine shall be paid into the county treasury; provided, however, that in any case where a fine was imposed for violation of any traffic offense provided in or authorized by Chapter 6 of this title on any "urban interstate system" if the arrest or citation in such case was made or issued by a member of the Uniform Division of the Department of Public Safety's motorcycle enforcement unit, the

remainder of such fine shall be remitted to the Department of Public Safety for the maintenance and enhancement of the Department's motorcycle program. The judge of the probate court or the person presiding over the municipal court must pay into the county treasury, municipal treasury, or Department of Public Safety by the fifteenth day of each month the remainder of all fines for the preceding month. Such payment must be accompanied by a list showing the name of the defendant in each case, the fine imposed in each case, the costs in each case and to whom paid, and the balance which is being paid into the treasury. The official making such payment must be given a written receipt by the person receiving the payment. No officer receiving a salary will receive any fees for arresting or attending court in any case arising under this article, but the usual fees must be assessed, and, if the arresting officer is not entitled to the costs, they must go to the county or city to which the fine is paid or Department of Public Safety as required by this Code section.

(b) As used in this Code section, the term "urban interstate system" means a portion of the national system of interstate and defense highways which:

- (1) Is located entirely within any part of this state; and
- (2) Includes a single numbered interstate highway which forms a closed loop or perimeter.

Where these conditions exist, the urban interstate system shall consist of the interstate highway constituting the closed loop or perimeter and all interstate highways or portions thereof located within such loop or perimeter, not including any portion of any interstate highway outside of the loop or perimeter. (Ga. L. 1937-38, Ex. Sess., p. 558, § 7; Ga. L. 1953, Jan.-Feb. Sess., p. 416, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 207, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 3, § 40; Ga. L. 2006, p. 159, § 2/HB 1209.)

Cross references. — Sentence and punishment generally, T. 17, C. 10. Surcharges to or apportionment of fines in certain traffic offense cases, §§ 15-21-73, 15-21-93, 15-21-112, 15-21-131, 15-21-149, 36-15-9, 47-11-51, 47-14-50, 47-16-60, and 47-17-60. Punishment for misdemeanor traffic offenses generally, § 17-10-3. Maximum fines for certain offenses, § 40-6-1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "Code

section" was substituted for "subsection" in the introductory language of subsection (b).

Editor's notes. — Ga. L. 2006, p. 159, § 3/HB 1209, and amended by Ga. L. 2010, p. 105, § 2-1/HB 981, not codified by the General Assembly, as amended by Ga. L. 2007, p. 47, § 15A/SB 103, and amended by Ga. L. 2010, p. 105, § 2-2/HB 981, provides: "This Act shall become effective on July 1, 2006."

JUDICIAL DECISIONS

Sheriff has right to costs for making arrest, even though the arrest is made contrary to the policy of the law that the person who makes the affidavit upon which a warrant is issued should not make the arrest thereunder. *Cooper v. Lunsford*, 203 Ga. 166, 45 S.E.2d 395 (1947).

Insolvent cost fund authorized. — Georgia L. Ex. Sess., 1937-38, p. 558, authorizes the establishment of an insolvent cost fund for the benefit of the officers of courts of ordinary (now probate court). *Cooper v. Lunsford*, 203 Ga. 166, 45 S.E.2d 395 (1947).

Claim against insolvent costs fund. — Law contemplates that an officer having a claim against an insolvent costs fund should present an itemized statement of the costs before being approved. When it is agreed, however, that the sheriff had performed a service for each item for which the sheriff has received costs from the court of ordinary (now probate court), the sheriff's failure to file a written itemized costs bill should not operate as a

forfeiture of such costs as the sheriff had received, or the sheriff's right to participate in an insolvent costs fund. *Cooper v. Lunsford*, 203 Ga. 166, 45 S.E.2d 395 (1947).

Probate judge erred by allowing defendants to "buy out" their community service. — Probate judge who told criminal defendants that the defendants had the burden of proving their innocence, who allowed defendants to "buy out" their community service sentences and kept the proceeds in a bank account that the judge controlled, participated in ex parte communications, insulted and abused parties in the judge's court, and disposed of cases outside the jurisdiction of the probate court, was found in violation of Ga. Code Jud. Conduct Canons 1, 2, and 3, Ga. Const. 1983, Art. VI, Sec. VII, Para. VII(a), and O.C.G.A. §§ 16-10-32 and 40-13-26, was removed from office and barred from seeking judicial office again. *Inquiry Concerning Fowler*, 287 Ga. 467, 696 S.E.2d 644 (2010).

OPINIONS OF THE ATTORNEY GENERAL

State highway patrolman's claim for fees. — State highway patrolman is not entitled to fees for the performance of the patrolman's duties in criminal cases of whatever type the duties may be. 1948-49 Op. Att'y Gen. p. 49.

Ga. L. 1937-38, Ex. Sess., p. 558, § 7 (see O.C.G.A. § 40-13-26) authorizes establishment of an insolvent cost fund for the benefit of the officers of the probate court. 1958-59 Op. Att'y Gen. p. 48.

Disposition of fines in cases transferred from municipal court to superior court. — Municipality cannot collect

and retain fines resulting from cases transferred from municipal court to superior court pursuant to O.C.G.A. § 40-13-23 since fines imposed by the superior court must be paid into the county treasury. 1984 Op. Att'y Gen. No. U84-44.

Since O.C.G.A. §§ 15-21-2 and 15-21-52 mandate that all fines collected by county courts be paid into the county treasury, a municipality and county cannot contract to provide for the division of moneys received as fines by the superior court from cases transferred under O.C.G.A. § 40-13-23. 1984 Op. Att'y Gen. No. U84-44.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, §§ 1, 96 et seq.

40-13-27. Records to be kept.

A written record is required to be kept of every case made or disposed of under this article. Such record shall be accessible at all times for public inspection and official audit and shall be kept and remain as a part of the permanent records of the court. (Ga. L. 1937-38, Ex. Sess., p. 558, § 8.)

OPINIONS OF THE ATTORNEY GENERAL

Purpose of section. — Under O.C.G.A. § 40-13-27, municipal traffic records must be accessible for public inspection. 1982 Op. Att'y Gen. No. U82-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, §§ 25, 52 et seq., 62, 63.

C.J.S. — 21 C.J.S., Courts, §§ 7, 310, 311, 314 et seq.

40-13-28. Appeal to superior court; bond.

Any defendant convicted under this article shall have the right of appeal to the superior court. The provisions of Code Sections 5-3-29 and 5-3-30 shall not apply to appeals under this Code section. Otherwise, the appeal shall be entered as appeals are entered from the probate court to the superior court, provided that the defendant shall be entitled to bail and shall be released from custody upon giving the bond as is provided for appearances in criminal cases in the courts of this state. Such bond shall have the same conditions as appearance bonds in criminal cases. The appeal to the superior court shall not be a de novo investigation before a jury but shall be on the record of the hearing as certified by the judge of that court who presided at the hearing below. (Ga. L. 1937-38, Ex. Sess., p. 558, § 10; Ga. L. 1986, p. 982, § 15.)

Cross references. — Appeals to superior courts generally, T. 5, C. 3.

Editor's notes. — Ga. L. 1986, p. 982,

§ 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

JUDICIAL DECISIONS

Construction of section. — Language of O.C.G.A. § 40-13-28 cannot be read in isolation so as to support a right of direct appeal regardless of the type of conviction but must instead be read in the context of the entire chapter (see O.C.G.A. Ch. 13, T. 40), which deals only with the trial of traffic offenses committed on public roads. *City of Adairsville v. Barton*, 159 Ga. App. 810, 285 S.E.2d 581 (1981).

Construing O.C.G.A. §§ 5-6-35(a)(1)

and 40-13-28 according to their real intent and meaning and not so strictly as to defeat the legislative purpose, the General Assembly did not intend to remove traffic appeals under § 40-13-28 from the discretionary appeals procedures. *Brown v. City of Marietta*, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

Any appeal from a superior court review under O.C.G.A. § 40-13-28 of any lower court, except the probate court, shall be

under O.C.G.A. § 5-6-35(a); however, an appeal from the superior court review under § 40-13-28 of a traffic case from the probate court shall be by direct appeal under O.C.G.A. § 5-6-34(a)(1). *Power v. State*, 231 Ga. App. 335, 499 S.E.2d 357 (1998).

Construction of 1986 amendment.

— The 1986 amendment to O.C.G.A. § 40-13-28 that changed the scope of review in the superior court from a *de novo* investigation to a review of the record was not also intended to change the method of appeal from the superior court in such cases from discretionary appeals under O.C.G.A. § 5-6-35(a)(1) to direct appeals under O.C.G.A. § 5-6-34(a). *Brown v. City of Marietta*, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

Scope of review. — In enacting O.C.G.A. § 40-13-28, the General Assembly provided for a right of appeal “on the record” to the superior court. Thus, the mandate of the superior courts is to review asserted errors of law in the proceedings below under general appellate principles. The appellant may not raise issues not litigated in the court below, but the appellant is entitled to a review of the record which ensures that the evidence has been received in conformity with statutory and constitutional standards and that the evidence supports the conviction. *Walton v. State*, 261 Ga. 392, 405 S.E.2d 29 (1991), cert. denied, 502 U.S. 982, 112 S. Ct. 587, 116 L. Ed. 2d 611 (1991).

O.C.G.A. § 40-13-28 applies only to probate courts and municipal courts and does not have the broad scope to apply to appeals from recorder’s court. *Zornes v. State*, 262 Ga. 757, 426 S.E.2d 355 (1993).

This section is procedural law. — Although O.C.G.A. § 40-13-28 certainly affects the assertion of substantive rights, the statute nonetheless falls within the category of a procedural law since the rule is that there are no vested rights in any course of procedure. *Holloman v. State*, 203 Ga. App. 476, 416 S.E.2d 839, cert. denied, 203 Ga. App. 906, 416 S.E.2d 839 (1992).

Appeal to the superior court is not a “de novo proceeding.” If the conviction is properly supported by the evidence, the conviction would stand; if not, an acquit-

tal would be required. The superior court would not, however, make an independent finding of guilt or innocence based on the evidence submitted, as would be done were the appeal, in fact, *de novo*. *Walton v. State*, 261 Ga. 392, 405 S.E.2d 29 (1991), cert. denied, 502 U.S. 982, 112 S. Ct. 587, 116 L. Ed. 2d 611 (1991).

Once it is waived in the probate court, the right to a jury trial may not be raised for the first time on appeal to the superior court, or to the appellate court. *Walton v. State*, 261 Ga. 392, 405 S.E.2d 29 (1991), cert. denied, 502 U.S. 982, 112 S. Ct. 587, 116 L. Ed. 2d 611 (1991).

Defendant not entitled to de novo review in superior court. — After the defendant was convicted in probate court of DUI and appealed to the superior court, the defendant was not entitled to a *de novo* review in the superior court, nor was the defendant entitled to another opportunity to decide whether the defendant wished to be tried in the probate court. *Holloman v. State*, 203 Ga. App. 476, 416 S.E.2d 839, cert. denied, 203 Ga. App. 906, 416 S.E.2d 839 (1992).

Defendant was not entitled to a trial *de novo* based on the defendant’s reliance upon a construction of O.C.G.A. § 40-13-28 that was disapproved in a later case. *Shannon v. State*, 205 Ga. App. 831, 424 S.E.2d 51, cert. denied, 205 Ga. App. 901, 424 S.E.2d 51 (1992).

Appeal procedures take precedence over any conflicting rules of procedure contained in the city charter, both because this statute is the latest expression of the General Assembly on the subject and also by reason of the general provision in the Georgia Constitution. *Giles v. City of Locust Grove*, 203 Ga. App. 164, 416 S.E.2d 758, cert. denied, 203 Ga. App. 906, 416 S.E.2d 758 (1992).

Review of recorder’s court decisions. — Proper method for obtaining review of a decision of a recorder’s court is either by direct appeal to the superior court, in the case of traffic violations, or by application for certiorari to the superior court. *Franklin v. Recorder’s Court*, 174 Ga. App. 498, 330 S.E.2d 429 (1985).

No direct appeal from county recorder’s court. — O.C.G.A. § 40-13-28 makes no mention of county recorder’s

courts and therefore a direct appeal is not provided from the decisions of such a court. *Henson v. DeKalb County*, 158 Ga. App. 348, 280 S.E.2d 393 (1981).

Discretionary appeal to appellate court. — Appeal that is created by O.C.G.A. § 40-13-28 is a “de novo proceeding,” whereby the superior court reviews the certified record below and makes a new determination as to guilt or innocence. A further appeal to the Court of Appeals must comply with the discretionary appeal provisions of O.C.G.A. § 5-6-35. *Anderson v. City of Alpharetta*, 187 Ga. App. 148, 369 S.E.2d 521 (1988).

Only convicted defendants may appeal. — O.C.G.A. § 40-13-28 conveys the right of appeal to the Superior Court only to a convicted defendant. *Sears v. State*, 196 Ga. App. 207, 396 S.E.2d 1 (1990).

De novo review before judge who is a lawyer. — Record devoid of any evidence that the probate court judge was not a lawyer failed to prove that the defendant should be accorded the right to a de novo review of the defendant’s conviction before a judge who was a lawyer. *Pippins v. State*, 204 Ga. App. 318, 419 S.E.2d 28 (1992).

Probate court’s summary of the evidence could serve as the basis for a new determination of guilt or innocence when the Court of Appeals, in a previous appeal, did not reject the probate court’s summary of the evidence as insufficient but merely held that if a transcript of the evidence had been made and relied upon by the superior court, the transcript should be included in the record on appeal. *Walker v. State*, 199 Ga. App. 519, 405 S.E.2d 322, cert. denied, 199 Ga. App. 907, 405 S.E.2d 322 (1991).

Insufficient record. — In a de novo proceeding, the superior court, following the court’s own applicable procedures, undertakes to address only those issues which the lower court was otherwise authorized to address. When the superior court did not have a sufficient record to review the probate court’s denial of the defendant’s motion to dismiss and plea in

bar, nothing remained for the Court of Appeals to review. *Eppinger v. State*, 198 Ga. App. 889, 403 S.E.2d 829, cert. denied, 198 Ga. App. 897, 403 S.E.2d 829 (1991).

Failure to accord defendant proper de novo review. — Superior court, which affirmed the defendant’s probate court conviction for speeding and driving under the influence after presuming that the verdict of the probate court was correct since there was no transcript reflecting evidence to the contrary, did not accord the defendant the de novo review to which the defendant was entitled. *Holloman v. State*, 199 Ga. App. 230, 404 S.E.2d 651 (1991).

Denial of de novo review. — Defendant’s contention that the defendant’s due process rights were violated because the defendant was denied a de novo review of the defendant’s conviction returned by a non-lawyer judge in the probate court failed since the procedure in Georgia provides for a review of the proceedings held before a probate judge. *Walker v. State*, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

Very existence of the procedure to recreate the events of an unrecorded trial pursuant to O.C.G.A. § 5-6-41(g) was sufficient to rebut the defendant’s unsubstantiated allegations that O.C.G.A. § 40-13-28 deprived the defendant of meaningful review of the defendant’s convictions. *Lyons v. State*, 239 Ga. App. 325, 521 S.E.2d 232 (1999).

Denial of mandatory review. — When the appellant did not receive the review mandated by O.C.G.A. § 40-13-28 it was necessary that the dismissal of appellant’s appeal of a conviction in municipal court be reversed and the case remanded for further proceedings. *Lankford v. City of Marietta*, 261 Ga. 602, 409 S.E.2d 515 (1991).

Cited in *Newmans v. State*, 65 Ga. App. 288, 16 S.E.2d 87 (1941); *Gilbert v. State*, 261 Ga. 425, 405 S.E.2d 498 (1991); *State v. Rigdon*, 284 Ga. App. 785, 645 S.E.2d 17 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Incarceration pending appeal. — O.C.G.A. § 40-13-28 requires that a misdemeanor traffic defendant who has been convicted in the probate court and who wishes to appeal to the superior court is to

be remanded to the custody of the sheriff pending the posting of an appellate bond only if the defendant has been sentenced to a term of imprisonment. 1989 Op. Att’y Gen. No. U89-30.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 23, 126, 138, 139, 147 et seq., 159 et seq., 173, 216.

40-13-29. Jurisdiction exclusive.

In all counties except those having city, county, or state courts, the judge of the probate court shall have exclusive jurisdiction of all traffic misdemeanor cases originating in the county outside of municipal corporations, and the judge of the municipal court in each municipal corporation shall have exclusive jurisdiction of traffic misdemeanor cases originating inside the corporate limits of municipalities. (Ga. L. 1937-38, Ex. Sess., p. 558, § 11; Ga. L. 1987, p. 3, § 40; Ga. L. 1992, p. 2785, § 29.)

JUDICIAL DECISIONS

State courts retain jurisdiction. — Superior, state, and municipal courts share concurrent jurisdiction over misdemeanor traffic offenses; thus, the defendant’s plea in bar in state court contesting jurisdiction over the defendant’s misdemeanor traffic violations was properly denied. *Govert v. State*, 257 Ga. App. 80, 570 S.E.2d 393 (2002).

Superior courts retain jurisdiction.

— O.C.G.A. § 40-13-29 does not take away jurisdiction from the superior court to try misdemeanor violations of traffic laws and vest such jurisdiction in courts of ordinary (now probate court) or municipal courts as the case might be exclusively as against the superior courts. *Smith v. State*, 62 Ga. App. 733, 9 S.E.2d 714 (1940); *Allen v. State*, 85 Ga. App. 887, 70 S.E.2d 543 (1952).

OPINIONS OF THE ATTORNEY GENERAL

Meaning of “exclusive.” — Term “exclusive” as used in Ga. L. 1937-38, Ex. Sess., p. 558, § 11 (see O.C.G.A. § 40-13-29) is intended merely to exclude jurisdiction of a recorder’s court in cases in which the offense is committed outside of a municipal corporation, and in turn the recorder’s court is given exclusive jurisdiction as against the probate court over offenses committed within the limits of a municipality. 1963-65 Op. Att’y Gen. p. 300.

Power of probate court not prohibited because of municipal court existence. — O.C.G.A. § 40-13-29 does not prohibit the probate court from exercising state judicial power in any county simply because of the existence of a municipal court within the corporate limits of a municipal corporation within that county. 1989 Op. Att’y Gen. No. U89-30.

Probate court may exercise power within limits of municipal corporation. — Probate court may exercise state

judicial power over misdemeanor traffic offenses occurring within the corporate limits of a municipal corporation when the charter of the municipal corporation authorizes a municipal court but no such court is in existence. The arresting officer in a misdemeanor traffic case is responsible for returning those charges to the proper court with jurisdiction to hear the matter, but, if the citation is erroneously returned to the incorrect court, that court should promptly act to transfer the matter to a court with jurisdiction to consider the charges. 1989 Op. Att'y Gen. No. U89-30.

Probate court lacks jurisdiction if there is a municipal court. — Judge of the probate court does not have jurisdiction over a traffic violation occurring inside the limits of a city, if there is a recorder's court or any other municipal court. 1963-65 Op. Att'y Gen. p. 303.

Concurrent jurisdiction with superior courts. — Superior courts have concurrent jurisdiction in cases arising under O.C.G.A. § 40-13-29. 1958-59 Op. Att'y Gen. p. 71.

While the jurisdiction of these courts are exclusive, each of the other courts inside the territorial limits described, this jurisdiction is concurrent of that of the superior court of the county involved. 1958-59 Op. Att'y Gen. p. 64.

Court's waiver of jurisdiction not permitted. — Since the General Assembly vested in the judge of recorder's court in each municipality the exclusive jurisdiction of cases arising inside municipality's corporate limits, the judge of the municipal court cannot vest that jurisdiction in another court by merely waiving the court's own jurisdiction. 1957 Op. Att'y Gen. p. 61.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, §§ 15, 122, 126.

40-13-30. Authority to make arrests.

Officers of the Georgia State Patrol and any other officer of this state or of any county or municipality thereof having authority to arrest for a criminal offense of the grade of misdemeanor shall have authority to prefer charges and bring offenders to trial under this article, provided that officers of an incorporated municipality shall have no power to make arrests beyond the corporate limits of such municipality unless such jurisdiction is given by local or other law. (Ga. L. 1937-38, Ex. Sess., p. 558, § 9; Ga. L. 1992, p. 2785, § 29.)

Cross references. — Provisions regarding procedure for arrests for violation of motor vehicle laws, § 17-4-23. Display

of driver's license in lieu of bail, formal recognizance, or incarceration for violations of traffic laws, § 17-6-11.

JUDICIAL DECISIONS

Outer limits of municipal officer's authority for misdemeanor arrests. — Ga. L. 1937-38, Ex. Sess., p. 558, § 9 defines outer limits of a municipal officer's authority in making arrest for misdemeanors and traffic offenses. *Jones v. City of Pembroke*, 220 Ga. 213, 138 S.E.2d 276 (1964) (see O.C.G.A. § 40-13-30).

Authority to issue citations. — Uni-

versity police officer had authority under O.C.G.A. § 40-13-30 to issue citations for an accident that occurred at an intersection that bordered the campus, and the trial court, therefore, properly denied the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 relating to the charge of failing to obey a traffic control device in violation of

O.C.G.A. § 40-6-20; the broad language of § 40-13-30 gave any officer of Georgia that had authority to arrest for a misdemeanor the authority to prefer charges and bring offenders to trial. *Hawkins v. State*, 281 Ga. App. 852, 637 S.E.2d 422 (2006).

Authority to arrest in other jurisdictions. — Henry County police officer was authorized to stop the defendant in Spalding County after another Henry County police officer who was off-duty reported seeing the defendant's vehicle weaving in and out of the defendant's lane and nearly hitting an abandoned vehicle. Under O.C.G.A. §§ 17-4-23 and 40-13-30, county police officers were authorized to arrest persons for traffic offenses in other jurisdictions for offenses committed in their presence and an officer may rely upon another officer's reporting to satisfy the presence requirement. *Weldon v. State*, 291 Ga. App. 309, 661 S.E.2d 672 (2008).

Arrest powers outside officers' appointed territories. — Ga. L. 1937-38, Ex. Sess., p. 558, § 9 provides by implication that certain officers (including deputy sheriffs) have arrest powers for these offenses outside the officers' appointed territories. This interpretation is compelled by the statute's specific territorial restriction of only municipal officers. *City of Winterville v. Strickland*, 127 Ga. App. 716, 194 S.E.2d 623 (1972) (see O.C.G.A. § 40-13-30).

Under common law, even a municipal officer has power of arrest outside the officer's city limits when a hot pursuit situation exists; therefore, an officer's pursuit of the defendant in a truck matching the description of a stolen vehicle, which went into an adjoining county, was authorized. *Hastings v. State*, 211 Ga. App. 873, 441 S.E.2d 83 (1994).

Arrest when offense committed in officer's presence. — An arrest under O.C.G.A. § 17-4-23, which allows a law enforcement officer to arrest a person for a motor vehicle violation by issuance of a citation when the offense is committed in the officer's presence, is an arrest authorized by "other law" and thus comes within the exception provided in O.C.G.A. § 40-13-30. *Glazner v. State*, 170 Ga. App. 810, 318 S.E.2d 233 (1984).

While a defendant claimed that charges of reckless driving should have been dismissed as the officer lacked authority to arrest the defendant out of the officer's jurisdiction, the officer was permitted to arrest the defendant under O.C.G.A. §§ 17-4-23(a) and 40-13-30 as the defendant committed a motor vehicle infraction in the officer's presence; additionally, the officer, as a private citizen, could make the arrest under O.C.G.A. § 17-4-60 as the crimes were committed in the officer's presence. *Griffis v. State*, 295 Ga. App. 903, 673 S.E.2d 348 (2009).

Trial court did not err in granting police officers summary judgment in a citizen's action alleging false imprisonment, assault and battery, and intentional infliction of emotional distress in connection with the defendant's arrest because the arrest was lawful under O.C.G.A. § 17-4-20 since obstruction occurred in the officers' presence; even if the officers did not have probable cause to arrest the defendant, the officers had the authority and discretion to arrest outside the officers' jurisdiction for offenses committed in the officers' presence and, therefore, the officers' immunity could not be defeated by the officers' decision to arrest outside of the officers' jurisdiction. *Taylor v. Waldo*, 309 Ga. App. 108, 709 S.E.2d 278 (2011).

"Hot pursuit" exception authorized. — Exception to Ga. L. 1937-38, Ex. Sess., p. 558, § 9 (see O.C.G.A. § 40-13-30) is an instance in which a crime is committed in the municipality and the officer's "hot pursuit" takes the officer beyond the officer's geographical limits to effectuate the arrest. *Wooten v. State*, 135 Ga. App. 97, 217 S.E.2d 350 (1975); *Poss v. State*, 167 Ga. App. 86, 305 S.E.2d 884 (1983).

Policeman's legal authority under the "hot pursuit" doctrine under Ga. L. 1937-38, Ex. Sess., p. 558, § 9 (see O.C.G.A. § 40-13-30) includes both the power to arrest and the power to perform other normal police functions incidental to and necessitated by the arrest. *Wooten v. State*, 135 Ga. App. 97, 217 S.E.2d 350 (1975).

Arrest is valid when the crime was committed in a municipality and a city officer gave "hot pursuit" which took the officer beyond the limits of the municipal-

ity to effectuate the arrest. *Argonaut Ins. Co. v. Head*, 149 Ga. App. 528, 254 S.E.2d 747 (1979).

Critical elements characterizing "hot pursuit" are the continuity and immediacy of the pursuit, rather than merely the rate of speed at which pursuit is made. *Poss v. State*, 167 Ga. App. 86, 305 S.E.2d 884 (1983).

"Hot pursuit" doctrine applied. — When the only violation committed in the presence of city officers was exceeding the speed limit in violation of a city ordinance, the "hot pursuit" doctrine still would apply. *Argonaut Ins. Co. v. Head*, 149 Ga. App. 528, 254 S.E.2d 747 (1979).

Although an arresting officer of an incorporated municipality normally did not have the power to make arrests beyond the corporate limits of that municipality, the officer's arrest of the defendant in a neighboring county was authorized under the "hot pursuit" doctrine since the officer spotted the car the defendant was reportedly traveling in inside the county where

the officer had arresting authority, and the officer continuously and immediately pursued the defendant's car into the neighboring county where the officer waited for backup to arrive in order to make the arrest; thus, the traffic stop of the defendant following a dispatch that the defendant was a suspected shoplifter was legal and the defendant's motion to suppress the evidence was properly denied. *Margerum v. State*, 260 Ga. App. 398, 579 S.E.2d 825 (2003).

Cited in *Newmans v. State*, 65 Ga. App. 288, 16 S.E.2d 87 (1941); *Dodd v. State*, 85 Ga. App. 589, 69 S.E.2d 784 (1952); *Wright v. State*, 134 Ga. App. 406, 214 S.E.2d 688 (1975); *McLarty v. State*, 176 Ga. App. 433, 336 S.E.2d 273 (1985); *Delong v. State*, 185 Ga. App. 314, 363 S.E.2d 811 (1987); *Page v. State*, 250 Ga. App. 795, 553 S.E.2d 176 (2001); *State v. Heredia*, 252 Ga. App. 89, 555 S.E.2d 91 (2001); *Grech v. Clayton County*, 335 F.3d 1326 (11th Cir. 2003); *Duprel v. State*, 301 Ga. App. 469, 687 S.E.2d 863 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Sheriff is authorized to enforce traffic regulations on the highways of this state. 1969 Op. Att'y Gen. No. 69-385.

"Hot pursuit" doctrine. — Municipal police officers may go beyond city limits in "hot pursuit" situations and make arrests. 1975 Op. Att'y Gen. No. U75-73.

Constable's authority limited. — In the absence of a warrant, a constable does not have the authority to enforce the motor vehicle laws of this state. 1975 Op. Att'y Gen. No. U75-56.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, §§ 24, 105, 106, 271, 311, 343, 355. 8 Am. Jur. 2d, *Automobiles and Highway Traffic*, §§ 988, 989, 996, 1022.

ALR. — Degree of force that may be employed in arresting one charged with a misdemeanor, 42 ALR 1200.

40-13-31. Arresting fees.

The sheriffs of the several counties of this state are entitled to an arresting fee, as provided by law, in every case in which the sheriff or his lawful deputy arrests, assists in arresting, or takes custody of any person charged with a crime who has been apprehended by an officer of the Georgia State Patrol and delivered to the sheriff or his lawful deputy. If the sheriff is upon a salary, the fee shall be paid into the county treasury. (Ga. L. 1943, p. 571, § 1; Ga. L. 1992, p. 2785, § 29.)

Cross references. — Abolition of fee system for compensation of sheriffs, § 15-16-19. Procedure for bringing complaint that speed limit is being enforced by county or municipality primarily for collection of revenue rather than for purposes of public safety, § 40-6-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "a" was inserted preceding "crime" in the first sentence.

JUDICIAL DECISIONS

Cited in *Sanders v. Wilkinson County*, 69 Ga. App. 676, 26 S.E.2d 467 (1943).

OPINIONS OF THE ATTORNEY GENERAL

Fee when sheriff does not participate in arrest. — Sheriff is not entitled to an arresting fee for an arrest made by the county police, when the sheriff does not participate in the arrest, but sheriffs are entitled to an arresting fee when the sheriffs assist in an arrest made by the Georgia State Patrol. 1945-47 Op. Att'y Gen. p. 96.

Sheriff is entitled to an arresting fee when the accused is arrested by a state patrolman and delivered to the

sheriff who accepts bond without confining the accused. 1954-56 Op. Att'y Gen. p. 115.

Arresting fees when offender could be brought before more than one court. — Ga. L. 1943, p. 571, § 1 (see O.C.G.A. § 40-13-31) would seem to contemplate that arresting fees would be the same regardless of which court an offender might be brought before when two or more courts have concurrent jurisdiction. 1963-65 Op. Att'y Gen. p. 300.

40-13-32. Restrictions on ability of courts to change or modify traffic law sentences or judgments.

(a) No court having jurisdiction over cases arising out of the traffic laws of this state or the traffic laws of any county or municipal government shall change or modify a traffic law sentence or judgment rendered pursuant to a conviction, plea of guilty, or plea of nolo contendere after 90 days from the date of judgment, except for the purpose of correcting clerical errors therein, unless there is strict compliance with all of the following requirements:

(1) A motion to change or modify the sentence or judgment is made by the defendant to the court rendering the judgment;

(2) Notice, including a copy of the motion and rule nisi, is given to the prosecuting official who brought the original charge at least ten days prior to the motion hearing; and

(3) A hearing is held with opportunity for the state to be heard.

(b) If the original judgment is changed or modified pursuant to this Code section, the judge shall certify to the Department of Driver Services that such change or modification is a true and correct copy of the change or modification and that the requirements set forth in

paragraphs (1) through (3) of subsection (a) of this Code section have been met.

(c) Except for orders correcting clerical errors, the Department of Driver Services shall not recognize as valid any change or modification order nor make any changes to a driver's history unless such change or modification as submitted to the department is in strict compliance with the requirements set forth in subsections (a) and (b) of this Code section.

(d) In the case of municipal courts, notice to the city attorney, or to the solicitor in those cases where the municipal court has a solicitor, shall be deemed to be notice as provided for in this Code section.

(e) In all cases wherein notice is required in this Code section, same shall be deemed sufficient if sent by certified mail or statutory overnight delivery, return receipt requested, with adequate postage thereon, to the correct address of the prosecuting official.

(f) Notwithstanding other laws and specifically notwithstanding Code Section 17-7-93, a motion to change or modify a traffic law sentence or judgment may, at any time prior to the expiration of the term of court following the term at which judgment and sentence were pronounced or within 90 days of the time judgment and sentence were pronounced, whichever time period is greater, be made by the defendant and accepted by the court as provided in this Code section. (Code 1981, § 40-13-32, enacted by Ga. L. 1984, p. 1144, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 1893, § 4; Ga. L. 1989, p. 14, § 40; Ga. L. 2000, p. 951, § 7A-2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 334, § 22-3/HB 501.)

OPINIONS OF THE ATTORNEY GENERAL

Strict compliance required. — Subsection (a) of O.C.G.A. § 40-13-32 reflects the intent of the General Assembly that all orders modifying previously entered judgments in misdemeanor traffic cases be considered of no force and effect unless the orders fully comply with all applicable provisions of that section, including both the procedural requirements of subsection (a) and the jurisdictional limitations found in subsection (f). The terminology specifically means that substantial compliance is insufficient. 1989 Op. Att'y Gen. No. 89-22.

Department of Public Safety is authorized to amend a plea of guilty or nolo contendere only after strict compliance with the procedural requirements of subsection (a) of O.C.G.A. § 40-13-32, when

applicable, and when the order modifying the judgment reflects that the order is based on a motion filed in a timely manner as defined in subsection (f). 1989 Op. Att'y Gen. No. 89-22.

Nunc pro tunc order. — If a nunc pro tunc order is entered by the court within 90 days of judgment and within the term of court and is not a clerical error, as such a nunc pro tunc order need not reflect compliance with the procedural requirements of subsection (a) of O.C.G.A. § 40-13-32, no further showing is required for the Department of Public Safety to make the appropriate changes to the Department's records. 1989 Op. Att'y Gen. No. 89-22.

If a nunc pro tunc order is entered by the court outside the term of court and is

not a clerical error, under subsection (f) of O.C.G.A. § 40-13-32, so long as the modification is based upon a motion filed within 90 days of judgment, the Department of Public Safety need not be concerned about the term of court, nor with compliance with the procedural requirements of subsection (a), but beyond the 90-day time period the department may not accept orders that do not reflect strict compliance with the procedural require-

ments of subsection (a), and orders based upon motions filed outside the 90-day time period are valid only if the trial court possessed the jurisdiction to enter the orders, which is dependent upon the filing of the motion which led to the modification within either the term of court that the judgment was entered or the next succeeding term. 1989 Op. Att'y Gen. No. 89-22.

40-13-33. Limitation on habeas corpus challenge of misdemeanor traffic conviction.

(a) Any challenge to a misdemeanor conviction of any of the traffic laws of this state or the traffic laws of any county or municipal government which may be brought pursuant to Chapter 14 of Title 9 must be filed within 180 days of the date the conviction becomes final.

(b) Any challenge to a conviction specified in subsection (a) of this Code section which became final before March 28, 1986, must be filed within 180 days following March 28, 1986.

(c) When the commissioner of driver services is named as the respondent, all such petitions must be brought in the Superior Court of Fulton County.

(d) Failure to file the challenge within the time prescribed in this Code section shall divest the court of jurisdiction. (Code 1981, § 40-13-33, enacted by Ga. L. 1986, p. 444, § 1; Ga. L. 1992, p. 2785, § 29; Ga. L. 2000, p. 951, § 7A-3; Ga. L. 2005, p. 334, § 22-4/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, "March 28, 1986" and "following March 28, 1986" were substituted for "the effective date of

this Code section" and "of the effective date of this Code section", respectively, in subsection (b).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-13-33 is not unconstitutional as a suspension of the writ of habeas corpus. *Earp v. Brown*, 260 Ga. 215, 391 S.E.2d 396 (1990), cert. denied, 498 U.S. 940, 111 S. Ct. 346, 112 L. Ed. 2d 310 (1990).

Construed with § 17-9-4. — O.C.G.A. § 40-13-33 creates a limited and procedural exception to the general rule of law codified at O.C.G.A. § 17-9-4 that a defendant can collaterally attack void judgments at any time; this statute does not permit a defendant, beyond 180 days after

the defendant's convictions, to attack the underlying convictions leading to the revocation of the defendant's driver's license under O.C.G.A. § 40-5-58. *Earp v. Brown*, 260 Ga. 215, 391 S.E.2d 396 (1990), cert. denied, 498 U.S. 940, 111 S. Ct. 346, 112 L. Ed. 2d 310 (1990).

Applicability. — O.C.G.A. § 40-13-33 applies to all challenges to final convictions of misdemeanor traffic offenses, not just to challenges by means of petition for a writ of habeas corpus. *Brown v. Earp*, 261 Ga. 522, 407 S.E.2d 737 (1991).

Permissible procedural restriction. — Procedural limitations of subsections (a) and (b) of O.C.G.A. § 40-13-33 neither suspend the writ of habeas corpus, nor cause a court to dismiss an action for habeas without consideration of the equities presented. Rather, the statute provides that in a narrowly defined class of cases—those in which a petitioner who is not in custody seeks habeas relief from a misdemeanor traffic conviction—the petition for habeas corpus must be filed within 180 days of conviction. As such, the statute imposes a permissible procedural restriction on a limited group of cases. *Earp v. Boylan*, 260 Ga. 112, 390 S.E.2d 577 (1990).

Scope of limitation. — The 180-day limitation is not restricted only to habeas corpus challenges actually brought under O.C.G.A. Ch. 14, T. 9, but applies to “any challenge” (except those categories of habeas corpus challenges excluded for obvious constitutional reasons by the Supreme Court’s holding in *Earp v. Boylan*, 260 Ga. 112, 390 S.E.2d 577 (1990)) which

may have been brought pursuant to that chapter. *Walker v. State*, 199 Ga. App. 701, 405 S.E.2d 887, cert. denied, 199 Ga. App. 907, 405 S.E.2d 887 (1991).

Defendant’s failure to timely assert a challenge to a prior guilty plea to a misdemeanor traffic conviction barred the defendant from collaterally attacking the voluntariness of the plea. *Grant v. State*, 231 Ga. App. 868, 501 S.E.2d 27 (1998).

Appeal of conviction for misdemeanor traffic violations untimely. — O.C.G.A. § 40-13-33 divested the trial court of jurisdiction to consider any challenge to a traffic conviction not made within 180 days of the conviction, and applied to all challenges to final convictions of misdemeanor traffic offenses; a trial court did not err by dismissing the defendant’s motion to reopen the defendant’s case when the motion was filed more than a year after the defendant’s conviction for various misdemeanor traffic violations. *Jeter v. State*, 269 Ga. App. 266, 603 S.E.2d 783 (2004).

ARTICLE 3

TRAFFIC VIOLATIONS BUREAUS

40-13-50. Establishment.

In every court of this state having jurisdiction over the violation of traffic laws or traffic ordinances, the judge, or the judges where there is more than one judge, may provide by written order for the establishment of a traffic violations bureau for the handling or disposition of certain traffic cases in substantial compliance with this article. The court shall promulgate and provide to the clerk of the traffic violations bureau a list of the traffic offenses which shall be handled and disposed of by the traffic violations bureau. However, nothing in this article shall authorize the judge of such court to employ any person or persons to administer this article. (Ga. L. 1966, p. 381, § 1; Ga. L. 1992, p. 2785, § 29.)

40-13-51. Appointment of clerk or deputy clerk; bond.

(a) The court may appoint a clerk or deputy clerk or deputy clerks, who shall be named in the order establishing the traffic violations bureau, for the purpose of receiving money as provided in this article. Any deputy clerk so appointed shall be under the direct supervision of and attached to the office of the clerk of the court.

(b) Such person or persons, except where such person is the clerk of the court and is already under bond, shall be bonded in the sum of \$2,500.00. (Ga. L. 1966, p. 381, § 2.)

40-13-52. Traffic offense cards; contents.

The court may, in its order, provide that there shall be maintained in the office of the traffic violations bureau cards known as "traffic offense cards." Upon each traffic offense card shall appear: the name and address of the person charged with a traffic offense; the date of the birth of such person; the sex of such person; and his driver's license number. The card shall be numbered so that it may show any previous traffic offense, giving the date of the offense, the trial date, the citation number, the disposition of the case, and the amount of any fine paid. (Ga. L. 1966, p. 381, § 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "person" was substituted for "persons" preceding "charged" in the second sentence.

40-13-53. Release of arrested person upon service of citation and complaint.

(a) Subject to the exceptions set out in subsection (b) of this Code section, any officer who arrests any person for the violation of a traffic law or traffic ordinance alleged to have been committed outside the corporate limits of any municipality shall permit such person to be released upon being served with a citation and complaint and agreeing to appear, as provided in this article. If such officer has reasonable and probable grounds to believe that the person will not obey such citation and agreement to appear, the officer may require such person to surrender his driver's license in accordance with Code Section 17-6-11.

(b) The following offenses shall not be handled or disposed of by a traffic violations bureau:

(1) Any offense for which a driver's license may be suspended by the commissioner of driver services;

(2) Any motor vehicle registration violation;

(3) A violation of Code Section 40-5-20;

(4) Speeding in excess of 30 miles per hour over the posted speed limit; or

(5) Any offense which would otherwise be a traffic violations bureau offense but which arose out of the same conduct or occurred in conjunction with an offense which is excluded from the jurisdiction of the traffic violations bureau. Any such offense shall be subject to the

maximum punishment set by law. (Ga. L. 1966, p. 381, § 3; Ga. L. 1983, p. 1000, § 16; Ga. L. 1992, p. 2785, § 29; Ga. L. 2000, p. 951, § 7A-4; Ga. L. 2005, p. 334, § 22-5/HB 501.)

JUDICIAL DECISIONS

Driving with suspended license is not offense to which O.C.G.A. § 40-13-53(a) applies. *United States v. Wilson*, 853 F.2d 869 (11th Cir. 1988), cert. denied, 488 U.S. 1041, 109 S. Ct. 866, 102 L. Ed. 2d 990 (1989).

Out-of-state offenders not covered. — O.C.G.A. § 40-13-53 is directed to officers dealing with residents in Georgia and does not attempt to cover out-of-state traffic offenders, per se. *O'Keefe v. State*, 189 Ga. App. 519, 376 S.E.2d 406, cert. denied, 189 Ga. App. 913, 376 S.E.2d 406 (1988).

Requiring a motorist cited for a traffic violation to drive the motorist's car to a correctional center, in accordance with standard procedure for booking out-of-state motorists and requiring the motorist to post bond, did not constitute an unlawful detention of the motorist or the motorist's automobile. *O'Keefe v. State*, 189 Ga. App. 519, 376 S.E.2d 406, cert. denied, 189 Ga. App. 913, 376 S.E.2d 406 (1988).

Cited in *Smith v. State*, 270 Ga. App. 759, 608 S.E.2d 35 (2004).

40-13-54. Disposition of original and copies of citation and complaint.

The original citation and complaint shall be sent by the officer issuing it to the traffic violations bureau of the court within 24 hours of the arrest. The defendant named in the citation shall be given the second copy. The officer issuing the citation and complaint shall retain one copy for himself or herself, and the court may, by order, provide that an additional copy shall be made for the use of any municipality in the county or the Department of Driver Services. (Ga. L. 1966, p. 381, §§ 7, 8; Ga. L. 2000, p. 951, § 7A-5; Ga. L. 2005, p. 334, § 22-6/HB 501.)

40-13-55. Cash bonds permitted.

Any person cited for any traffic offense under the jurisdiction of the traffic violations bureau of the court shall be permitted to give a cash bond for his appearance under the terms and conditions as set forth upon the citation and complaint given to him at the time he is cited by the arresting officer for a traffic violation. (Ga. L. 1966, p. 381, § 10.)

Cross references. — Acceptance of cash bonds for traffic violations generally, § 17-6-5. Display of driver's license in lieu

of incarceration, formal recognizance, or bail by persons arrested for traffic violations, § 17-6-11.

JUDICIAL DECISIONS

Effect of failure to appear. — Ga. L. 1966, p. 381, § 10 (see O.C.G.A. § 40-13-55) does not convert bond forfei-

ture into criminal convictions, but merely establishes that in the event of a failure to appear in court, the bond will be forfeited

and the failure construed as an admission of guilt. *Duncan v. Ricketts*, 232 Ga. 89, 205 S.E.2d 274 (1974).

Traffic violation not considered felony. — Because a traffic violation under the jurisdiction of the traffic violations

bureau cannot be considered as a misdemeanor, it follows that the violation cannot be construed to be a felony. *Duncan v. Ricketts*, 232 Ga. 89, 205 S.E.2d 274 (1974).

40-13-56. Officer not to accept cash bond.

No officer giving a citation and complaint to a defendant for a traffic violation shall accept a cash bond himself. (Ga. L. 1966, p. 381, § 11.)

40-13-57. Taking of cash bond where officer doubts that arrested person will appear.

In the event an officer has authority to issue citation and complaint as set forth in Code Section 40-13-53 but declines to do so because of his belief that such person will not obey the citation and agreement to appear, such officer may bring such person to the traffic violations bureau and such person may be allowed to post a cash bond for his appearance in accordance with the schedule established by the court. (Ga. L. 1966, p. 381, § 4; Ga. L. 1992, p. 2785, § 29.)

40-13-58. Failure to appear after giving cash bond as admission of guilt; forfeiture of bond; order to stand trial not precluded.

Where a defendant cited for a traffic violation posts a cash bond according to the schedule set up by court order and fails to appear in court at the term of court and on the day set in the original citation and complaint, then and in that event, such failure shall be construed as an admission of guilt and the cash bond may be forfeited without the necessity for the statutory procedure provided for the forfeiture of statutory bail bonds. A judgment of guilty may be entered accordingly, ordering the case disposed of and settled. The proceeds of the cash bond shall be applied and distributed as any fine imposed by said court would be. Nothing in this Code section shall be construed as preventing the judge from ordering the defendant to appear and stand trial. (Ga. L. 1966, p. 381, § 10.)

JUDICIAL DECISIONS

In general. — When a defendant cited for a traffic violation posts a cash bond according to the schedule set up by court order and fails to appear in court at the term of court and on the day set in the original citation and complaint, then and

in that event, such failure shall be construed as an admission of guilt and the cash bond may be forfeited; in these circumstances, a plaintiff has established negligence per se in the violation of a statute, which is a prima facie showing of

negligence. *Coleman v. Fortner*, 260 Ga. App. 373, 579 S.E.2d 792 (2003).

Admission against interest. — When a defendant cited for a traffic violation posts a cash bond and fails to appear in court at the term of court and on the day set in the original citation and complaint, then such failure shall be construed as an admission of guilt and the cash bond may be forfeited under O.C.G.A. § 40-13-58; the rule, as to parties to a suit, is that, while convictions for criminal offenses are inadmissible in a civil personal injury action, a plea of guilty may be shown as an admission against interest. *Howard v. Lay*, 259 Ga. App. 391, 577 S.E.2d 75 (2003).

When a motorist who was a defendant in a personal injury suit arising from an automobile accident was issued a citation in connection with the accident, was aware that the citation was issued, even though the motorist was unable to sign the citation as the motorist was being treated for injuries, but was aware that the motorist's spouse had paid the citation for the motorist, after which the motorist did not appear in court as directed by the citation, it was proper to instruct the jury in the personal injury suit that the jury could consider this bond forfeiture to be an admission against interest. *Burnette v. Brown*, 272 Ga. App. 383, 612 S.E.2d 489 (2005).

Driver's failure to appear on a traffic citation for which the driver posted a cash bond was construed as an admission of guilt in a motorist's civil suit arising from the accident which led to the citation; since the driver did not appear at the trial of the civil suit, the driver's negligence was un rebutted and was conclusive. *Pep Boys-Manny, Moe & Jack, Inc. v. Yahyapour*, 279 Ga. App. 674, 632 S.E.2d 385 (2006).

No admission against interest found. — Payment of a fine for a traffic citation did not constitute an admission against interest in a personal injury suit

arising from the accident where the tortfeasor testified that the tortfeasor had no knowledge of the citation until the tortfeasor's deposition, when it was mentioned by the tortfeasor's attorney, as the tortfeasor was unconscious when the citation was issued, and that the tortfeasor's spouse must have paid the fine while the tortfeasor was recuperating. *Howard v. Lay*, 259 Ga. App. 391, 577 S.E.2d 75 (2003).

Calculating criminal history based on bond forfeiture. — Sentence imposed for the defendant's 2008 bank robbery was vacated and the case was remanded for resentencing because the defendant's bond forfeiture should not factor into the calculation of the defendant's criminal history under U.S. Sentencing Guidelines Manual § 4A1.2(a) (2008) if the defendant's failure to attend the February 2008 arraignment was involuntary under O.C.G.A. § 17-6-72(b), and the district court, assuming that all Georgia bond forfeitures should be considered convictions for purposes of calculating criminal history under the sentencing guidelines pursuant to O.C.G.A. § 40-13-58, did not determine whether the defendant's failure to attend the arraignment was willful or involuntary. *United States v. Daniel*, 358 Fed. Appx. 79 (11th Cir. 2009) (Unpublished).

Jury charge proper. — In the victim's action for damages for a vehicle collision in which the driver posted bond for a traffic citation but did not appear in court, the trial court's charge that the driver's failure to appear was an admission of guilt was an accurate statement of the law regarding forfeiture. *Coleman v. Fortner*, 260 Ga. App. 373, 579 S.E.2d 792 (2003).

Cited in *Cannon v. Street*, 220 Ga. App. 212, 469 S.E.2d 343 (1996); *Furlong v. Dyal*, 246 Ga. App. 122, 539 S.E.2d 836 (2000); *Eubanks v. Waldron*, 263 Ga. App. 75, 587 S.E.2d 253 (2003); *Hite v. Anderson*, 284 Ga. App. 156, 643 S.E.2d 550 (2007).

40-13-59. Records to be kept by traffic violations bureau; filing of citation and complaint; time for posting cash bond; when bond forfeited.

(a) The traffic violations bureau of the court shall record on the prescribed form, as set out in Code Section 40-13-52, the driving record of the defendant. If there is no previous record of the driver's history, the citation appearing on the original citation and complaint shall be entered on the driver's traffic offense card; and each traffic offense thereafter shall be entered thereon, with the disposition thereof, up to a period of four years.

(b) All the pending cases which appear on the citation and complaint issued by the arresting officer, as provided for in this article, shall be filed at the cashier's desk in the traffic violations bureau of the court and shall be retained there up until 72 hours, or such other period of time as the judge shall fix by order, prior to the time the case is set for trial in the court. If cash bond is posted according to the schedules prescribed by order of the judge at any time up to 72 hours, or such other period of time as the judge shall fix by order, prior to the date of the court appearance, as specified in the citation and complaint, the same shall be entered on the driver's traffic offense card and an entry shall be made thereon that the driver has posted a cash bond.

(c) Within 72 hours after the date set for a hearing in the court on the citation and complaint given, where the defendant has posted a cash bond and has failed to appear for the hearing, the court shall enter an order that the cash bond has been forfeited in accordance with this article. Such order shall be recorded on the back of the citation and complaint which is maintained in the traffic violations bureau of the court and shall also be recorded on the defendant's traffic offense card. (Ga. L. 1966, p. 381, § 11.)

JUDICIAL DECISIONS

Similar acts of speeding admissible.

— Since the statute cited by the defendant referred only to the recording of the defendant's driving record by the traffic violations bureau of the court, the statute in no way prohibited the state from presenting evidence of independent similar acts of the defendant. The evidence of other similar acts of speeding committed by the

defendant met the requirements for admission of other independent crimes or acts committed by the defendant for the purpose of showing identity, motive, plan, scheme, bent of mind, and/or course of conduct. *Taylor v. State*, 205 Ga. App. 84, 421 S.E.2d 104 (1992), overruled on other grounds, *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

40-13-60. Disposition of traffic violations; jurisdiction of bureau.

Any traffic violation under the jurisdiction of the traffic violations bureau shall be characterized and classified as a traffic violation and shall not be considered as a misdemeanor. Whenever any traffic violation is transferred from another court to a court which has a traffic violations bureau, if such offense is classified as a traffic violation on the traffic violations bureau schedule of the receiving court, such violation shall be handled and disposed of by such traffic violations bureau. Where a defendant demands a trial on a traffic violation, it shall be tried before a judge of the court which established the traffic violations bureau. The request for a trial shall not result in a loss of jurisdiction by the traffic violations bureau. (Ga. L. 1966, p. 381, § 12; Ga. L. 1992, p. 2785, § 29.)

JUDICIAL DECISIONS

O.C.G.A. § 40-13-60 is unconstitutional to the extent the statute may be interpreted as limiting a traffic violator to a bench trial and because the written rights advisement form used with regard to the traffic violations charged against a defendant was tailored only to guilty pleas and did not adequately address the defendant's right to a jury trial. *Smith v. State*, 270 Ga. App. 759, 608 S.E.2d 35 (2004).

No right to counsel on speeding charge. — Defendant was not entitled to counsel at the bench trial when the defendant was tried for speeding because, pursuant to O.C.G.A. § 40-13-60, the defendant was tried for a traffic violation, and was not subjected to a misdemeanor prosecution. *Miller-Roy v. State*, 255 Ga. App. 575, 565 S.E.2d 899 (2002).

Right to trial by jury. — O.C.G.A. § 40-6-60 manifestly infringes on Ga. Const. 1983, Art. I, Sec. XI, Para. I insofar as the statute denies a criminal defendant, who is subject to potential punishment as a misdemeanant, the right to trial by jury; eliminating the language in O.C.G.A. § 40-13-60 that seemingly restricts a traffic violator to a bench trial would not undermine the general intent and overall scheme of O.C.G.A. § 40-13-50 et seq. *Geng v. State*, 276 Ga. 428, 578 S.E.2d 115 (2003).

Cited in *Daniel v. State*, 169 Ga. App. 722, 314 S.E.2d 737 (1984); *Keller v. State*, 183 Ga. App. 717, 359 S.E.2d 714 (1987); *Adefemi v. Ashcroft*, 335 F.3d 1269 (11th Cir. 2003).

40-13-61. Where records maintained; accusations of traffic violations not to be entered on misdemeanor docket; when action maintainable on accusation of traffic violation.

All records other than those excepted in this article shall be maintained at the traffic violations bureau of the court. No accusation of an offense for which citation and complaint may be issued shall be entered on the misdemeanor docket maintained by the clerk of the court. No accusation for any offense coming under the jurisdiction of the traffic violations bureau of the court shall be taken by the prosecuting attorney of the court or maintained in his office unless said person to

whom the said summons was issued fails to post a cash bond as defined in this article or fails to appear on the date specified in the summons to answer said complaint. (Ga. L. 1966, p. 381, § 9; Ga. L. 1985, p. 149, § 40.)

40-13-62. When bureau loses jurisdiction; issuance of accusation and bench warrant.

When any person cited for a traffic violation pursuant to this article fails to appear in court on the date specified in the citation and in accordance with his written promise to appear, unless such person has posted a cash bond as provided in this article, the traffic violations bureau thereupon loses jurisdiction and the citation shall be forwarded to the prosecuting attorney of the court who shall have an accusation issued against such person. Upon motion of the prosecuting attorney, a bench warrant shall issue based on the accusation for the arrest of the defendant. The defendant's case shall be docketed by the clerk of the court and handled as all other misdemeanors. (Ga. L. 1966, p. 381, § 12; Ga. L. 1992, p. 2785, § 29.)

JUDICIAL DECISIONS

Section determines when accusation is "found." — It is not until the traffic violations bureau loses jurisdiction to the state court under O.C.G.A. § 40-13-62 that a uniform traffic citation becomes an accusation and is "found" for

purposes of O.C.G.A. § 17-7-170. *Keller v. State*, 183 Ga. App. 717, 359 S.E.2d 714 (1987).

Cited in *Smith v. State*, 270 Ga. App. 759, 608 S.E.2d 35 (2004).

40-13-63. Penalty for failure to appear.

The willful failure of any person to appear in accordance with the written promise contained on the citation and complaint and served upon such person shall constitute an offense which shall be punishable by fine in an amount not to exceed \$200.00 or by confinement in jail for a period not to exceed three days. (Ga. L. 1966, p. 381, § 13; Ga. L. 1999, p. 334, § 4.)

40-13-64. Suspended sentence division; collection of fines.

The court may provide that its traffic violations bureau, in addition to the duties set out in this article, shall have charge of what shall be called and designated in the court as the "Suspended Sentence Division of the _____ Court." This division of the court shall be responsible for collecting fines imposed upon persons convicted in the court, where the sentence is suspended upon the payment of a fine. The person or persons in the division shall be authorized, where the judge imposing the sentence stipulates the same therein, to permit such persons

receiving suspended sentences, in addition to the other conditions imposed in the suspended sentence, to pay the suspended sentence fine in installments. The person or persons responsible for the administration of the suspended sentence division shall be responsible for collecting the suspended sentence fine by installments and shall also be responsible for the arrest of persons who fail in this respect to comply with the conditions of the suspended sentence. (Ga. L. 1966, p. 381, § 14.)

CHAPTER 14

USE OF SPEED DETECTION AND TRAFFIC-CONTROL SIGNAL MONITORING DEVICES

Article 1

General Provisions

Sec.

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Article 2

Speed Detection Devices

- 40-14-2. Permit required for use; use not authorized where officers paid on fee system; operation by registered or certified peace officers.
- 40-14-3. Application for permit; use of device while application pending.
- 40-14-4. Compliance with rules of Federal Communications Commission; certification of devices.
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- 40-14-6. Warning signs required.
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- 40-14-12. Administrative hearing upon permit suspension or revocation.

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- 40-14-13. Administrative and judicial appeal of decision suspending or revoking permit.
- 40-14-14. Petition for reconsideration following permit suspension or revocation.
- 40-14-15. Rehearing or restoration of permit at direction of Governor.
- 40-14-16. Restrictions on suspension or revocation of drivers' licenses; reports to Department of Driver Services to specify speed.
- 40-14-17. Laser devices; reliability and admissibility of evidence.

Article 3

Traffic-Control Signal Monitoring Devices

- 40-14-20. Definitions.
- 40-14-21. Traffic-control signal monitoring devices; application and permit for operation.
- 40-14-22. Timing of traffic-control signals.
- 40-14-23. Use of signs to notify motorists of traffic-control signal monitoring devices.
- 40-14-24. Reporting of traffic-control signal monitoring device use to Department of Transportation.
- 40-14-25. Complaints about traffic-control signal monitoring devices; rebuttable presumption; remission of revenues.
- 40-14-26. Revoking traffic-control signal monitoring device permit; hearing; reconsideration.

Administrative rules and regulations. — Speed detection devices, Official Compilation of the Rules and Regulations

of the State of Georgia, Department of Public Safety, Chapter 570-7.

JUDICIAL DECISIONS

Record keeping. — Records of Department of Public Safety kept to be used in speeding cases in which radar speed determinations were to be introduced in evidence were records made in the regular

course of business within the meaning of former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803). *Wiggins v. State*, 249 Ga. 302, 290 S.E.2d 427 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Application of chapter to counties and municipalities. — Ga. L. 1968, p. 425 (see O.C.G.A. Ch. 14, T. 40) is intended to apply to the law enforcement officers of counties and municipalities. 1975 Op. Att'y Gen. No. 75-10.

Ga. L. 1968, p. 425 (see O.C.G.A. Ch. 14, T. 40) places no restrictions on the use of Vascar and radar by the Department of Public Safety. 1975 Op. Att'y Gen. No. 75-10.

Ga. L. 1968, p. 425 (see O.C.G.A. Ch. 14, T. 40) does not cover any operation of timing devices by the Department of Public Safety, but rather is limited to governing the manner in which county and municipal law enforcement officers may employ radar and Vascar. 1975 Op. Att'y Gen. No. 75-10.

RESEARCH REFERENCES

ALR. — Presumption and burden of proof of accuracy of scientific and mechanical instruments for measuring speed, temperature, time, and the like, 21 ALR2d 1200.

Automobiles: speeding prosecution

based on observation from aircraft, 27 ALR3d 1446.

Possession or operation of device for detecting or avoiding traffic radar as criminal offense, 17 ALR4th 1334.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 2001, p. 770, § 4 designated Code Section 40-14-1 as Article 1 of this chapter.

40-14-1. Definitions.

As used in this chapter, the term:

(1) "Campus" means the grounds owned or occupied by a college or university.

(2) "Campus law enforcement agency" means the campus agency charged with the enforcement of the laws of this state.

(3) "College or university" means an accredited public or private educational institution of higher learning.

(4) "Speed detection device" means, unless otherwise indicated, that particular device designed to measure the speed or velocity of a

motor vehicle and marketed under the name "Vascar" or any similar device operating under the same or similar principle and any devices for the measurement of speed or velocity based upon the Doppler principle of radar or the speed timing principle of laser. All such devices must meet or exceed the minimum performance specifications established by the Department of Public Safety. (Ga. L. 1968, p. 425, § 3; Ga. L. 1970, p. 435, § 3; Ga. L. 1984, p. 502, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, §§ 4, 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "principle" was substituted for "principal" preceding "of radar" in the first sentence of paragraph (4).

Law reviews. — For review of 1996 use of radar speed detection devices legislation, see 13 Ga. St. U.L. Rev. 244 (1996).

JUDICIAL DECISIONS

Laser-based devices. — Inclusion of laser-based devices in the definition of "speed detection devices," without more, does not vitiate the state's burden of satisfying the requirements applicable to "novel scientific evidence." *Izer v. State*, 236 Ga. App. 282, 511 S.E.2d 625 (1999).

Failure to prove that the radar was used in accordance with the required prerequisites did not require approval of the defendant's motion to suppress when

the officer testified at trial that the officer stopped the defendant's car because the officer first observed the defendant driving in excess of the posted speed limit and then confirmed this observation through the use of radar. *Green v. State*, 239 Ga. App. 617, 521 S.E.2d 441 (1999).

Evidentiary foundation properly laid. — See *Brooker v. State*, 206 Ga. App. 563, 426 S.E.2d 39 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Definition of "speed detection device." — Definition of "speed detection device" found in O.C.G.A. § 35-8-2(11) does not conflict with the definition for the same device found in O.C.G.A. § 40-14-1. 1981 Op. Att'y Gen. No. 81-77.

O.C.G.A. § 35-8-2(11) does not bring in any additional types of devices not considered under the definition found in O.C.G.A. § 40-14-1. 1981 Op. Att'y Gen. No. 81-77.

Stopwatch. — Although not normally thought to be a "speed detection device," a stopwatch does meet that definition under O.C.G.A. § 35-8-2(11) when the stopwatch is used in traffic enforcement. 1981 Op. Att'y Gen. No. 81-77.

Stopwatch is a similar mechanism to "Vascar." In actuality, "Vascar" is a type of stopwatch combined with a computer which handles the mathematical functions. 1981 Op. Att'y Gen. No. 81-77.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 980 et seq.

ARTICLE 2
SPEED DETECTION DEVICES

Editor's notes. — Ga. L. 2001, p. 770, through 40-14-17 as Article 2 of this chapter. § 4 designated Code Sections 40-14-2

40-14-2. Permit required for use; use not authorized where officers paid on fee system; operation by registered or certified peace officers.

(a) The law enforcement officers of the various counties, municipalities, colleges, and universities may use speed detection devices only if the sheriffs of such counties, or the governing authorities of such counties, or the governing authorities of such municipalities, or the president of such college or university shall approve of and desire the use of such devices and shall apply to the Department of Public Safety for a permit to use such devices in accordance with this chapter.

(b) No county sheriff, county or municipal governing authority, college, or university shall be authorized to use speed detection devices where any arresting officer or official of the court having jurisdiction of traffic cases is paid on a fee system. This subsection shall not apply to any official receiving a recording fee.

(c) A permit shall not be issued by the Department of Public Safety to an applicant under this Code section unless the applicant provides law enforcement services by certified peace officers 24 hours a day, seven days a week on call or on duty or allows only peace officers employed full time by the applicant to operate speed detection devices. Speed detection devices can only be operated by registered or certified peace officers of the county sheriff, county, municipality, college, or university to which the permit is applicable. Persons operating the speed detection devices must be registered or certified by the Georgia Peace Officer Standards and Training Council as peace officers and certified by the Georgia Peace Officer Standards and Training Council as operators of speed detection devices. (Ga. L. 1968, p. 425, § 1; Ga. L. 1978, p. 2254, § 1; Ga. L. 1979, p. 771, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 6; Ga. L. 1997, p. 956, § 1; Ga. L. 1999, p. 1227, § 1.)

Cross references. — Certification of persons employed to use speed detection devices, § 35-8-12.

Law reviews. — For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 192 (1999).

For comment on *State v. Tomanelli*, 153 Conn. 365, 216 A.2d 625 (1966), discussing judicial notice of radar speedometer guidance, see 18 Mercer L. Rev. 299 (1966).

JUDICIAL DECISIONS

Use of device not restricted. — Phrase “in accordance with the provisions of O.C.G.A. Ch. 14, T. 40” modifies the application for a permit rather than the use of the speed detection device, and a total and unswerving compliance with the

chapter is not required in such use. *Ferguson v. State*, 163 Ga. App. 171, 292 S.E.2d 87 (1982).

Admissibility in evidence. — See *Wiggins v. State*, 249 Ga. 302, 290 S.E.2d 427 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Construction of section. — Ga. L. 1968, p. 425, § 1 (see O.C.G.A. § 40-14-2) should be construed in light of the evil it was designed to remedy, which “evil” was the possible abuse of the use of such devices by law enforcement officers who were compensated on a percentage fee basis. 1975 Op. Att’y Gen. No. 75-10.

Eligibility to use detection devices. — Absent independent legal authorization, a county marshal or deputy marshal does not have authority to apply for or use speed detection devices. 2005 Op. Att’y Gen. No. 2005-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 263. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 977 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 19, 28 et seq., 69 et seq., 74. 61A C.J.S., Motor Vehicles, §§ 1641 et seq.

40-14-3. Application for permit; use of device while application pending.

(a) A county sheriff, county or municipal governing authority, or the president of a college or university may apply to the Department of Public Safety for a permit to authorize the use of speed detection devices for purposes of traffic control within such counties, municipalities, colleges, or universities on streets, roads, and highways, provided that such application shall name the street or road on which the device is to be used and the speed limits on such street or road shall have been approved by the Office of Traffic Operations of the Department of Transportation. Law enforcement agencies are authorized to use speed detection devices on streets and roads for which an application is pending as long as all other requirements for the use of speed detection devices are met. Nothing in this subsection shall be construed to affect the provisions of Code Section 40-14-9.

(b) The Department of Public Safety is authorized to prescribe by appropriate rules and regulations the manner and procedure in which applications shall be made for such permits and to prescribe the required information to be submitted by the applicants. The Department of Public Safety may deny the application or suspend the speed detection device permit for failure to provide information or documentation at the department’s request. (Ga. L. 1968, p. 425, §§ 2, 4; Ga. L.

1970, p. 435, § 2; Ga. L. 1989, p. 586, § 1; Ga. L. 1995, p. 713, § 1; Ga. L. 1996, p. 1281, § 7; Ga. L. 1999, p. 1227, § 2; Ga. L. 2004, p. 631, § 40.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “Code” was substituted for “O.C.G.A.” in the last sentence of subsection (a).

Law reviews. — For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 192 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of section. — “Remedy” undertaken by the legislature in O.C.G.A. § 40-14-3 was the statutory regulation of the use of Vascar and radar by counties and municipalities, the Department of Public Safety being designated as the regulating agency. 1975 Op. Att’y Gen. No. 75-10.

Refusal to issue permit. — Department of Public Safety may refuse to issue a speed detection device permit if the requisite procedure and information has not been followed and submitted by the applicant. 1974 Op. Att’y Gen. No. 74-74.

Addition to original permit. — If a proper application has been made to add additional streets and highways to a speed detection device permit, such addition may be accomplished by issuing a new permit or by adding the new streets and highways to the original permit. 1974 Op. Att’y Gen. No. 74-74.

Eligibility to use detection devices. — Absent independent legal authorization, a county marshal or deputy marshal does not have authority to apply for or use speed detection devices. 2005 Op. Att’y Gen. No. 2005-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 263, 264. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 977 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 28 et seq., 69 et seq. 61A C.J.S., Motor Vehicles, § 1641 et seq.

40-14-4. Compliance with rules of Federal Communications Commission; certification of devices.

No state, county, municipal, or campus law enforcement agency may use speed detection devices unless the agency possesses a license in compliance with Federal Communications Commission rules, and unless each device, before being placed in service and annually after being placed in service, is certified for compliance by a technician possessing a certification as required by the Department of Public Safety. (Ga. L. 1978, p. 2254, § 1; Ga. L. 1979, p. 771, § 1; Ga. L. 1988, p. 308, § 1; Ga. L. 1989, p. 586, § 1.)

JUDICIAL DECISIONS

Failure to establish all of foundation elements. — When the defendant was convicted of speeding, the defendant was correct that the state failed to estab-

lish all of the foundational elements that are applicable to state troopers, such as the introduction of evidence as to the State Patrol’s licensing and annual certi-

fication of its radar devices. *Brown v. State*, 204 Ga. App. 629, 420 S.E.2d 35 (1992), overruled on other grounds, *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Defendant waived claim of error regarding proper foundation. — Defendant did not show that the trial court erred in admitting into evidence the results of a radar speed detection device as the defendant objected to admission of the results for lack of “foundation,” but did not state what the foundation should be; accordingly, the defendant waived a claim of error. *Keller v. State*, 271 Ga. App. 79, 608 S.E.2d 697 (2004).

Certificate of accuracy dated within one year prior to the use of radar. — State met the requirements of the statute by producing a copy of the certificate of accuracy dated within one year prior to the use of the radar in the case. *Gamble v. State*, 237 Ga. App. 414, 515 S.E.2d 422 (1999).

Administrative certificate sufficient for county police. — When a

radar detection device was operated by a county officer, the administrative permit issued by the Department of Public Safety presumptively complied with O.C.G.A. § 40-14-4 and an actual Federal Communications Commission license did not need to be produced to demonstrate compliance. *Brooker v. State*, 206 Ga. App. 563, 426 S.E.2d 39 (1992); *Nairon v. State*, 215 Ga. App. 76, 449 S.E.2d 634 (1994).

Uncertified technician. — When the manufacturer’s certification of accuracy and correctness of operation failed to show that the compliance check was done by a technician possessing certification as required by the Department of Public Safety, the state failed to show compliance with the third foundational requirement contained in *Wiggins*, and the admission of the radar evidence of speed was error. *Hardaway v. State*, 207 Ga. App. 150, 427 S.E.2d 527 (1993).

Cited in *Gray v. State*, 156 Ga. App. 117, 274 S.E.2d 115 (1980); *Wiggins v. State*, 249 Ga. 302, 290 S.E.2d 427 (1982).

40-14-5. Testing; removal of inaccurate radar devices from service.

(a) Each state, county, municipal, or campus law enforcement officer using a radar device shall test the device for accuracy and record and maintain the results of the test at the beginning and end of each duty tour. Each such test shall be made in accordance with the manufacturer’s recommended procedure. Any radar unit not meeting the manufacturer’s minimum accuracy requirements shall be removed from service and thereafter shall not be used by the state, county, municipal, or campus law enforcement agency until it has been serviced, calibrated, and recertified by a technician with the qualifications specified in Code Section 40-14-4.

(b) Each county, municipal, or campus law enforcement officer using a radar device shall notify each person against whom the officer intends to make a case based on the use of the radar device that the person has a right to request the officer to test the radar device for accuracy. The notice shall be given prior to the time a citation and complaint or ticket is issued against the person and, if requested to make a test, the officer shall test the radar device for accuracy. In the event the radar device does not meet the minimum accuracy requirements, the citation and complaint or ticket shall not be issued against the person, and the radar device shall be removed from service and thereafter shall not be used by

the county, municipal, or campus law enforcement agency until it has been serviced, calibrated, and recertified by a technician with the qualifications specified in Code Section 40-14-4. (Ga. L. 1978, p. 2254, § 1; Ga. L. 1979, p. 771, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 8.)

JUDICIAL DECISIONS

Classification drawn by subsection (b) of O.C.G.A. § 40-14-5 between county and municipal officers, who must offer to prove to suspected speeders the accuracy of their radar speed detectors, and state officers, who need not make such an offer, is rationally related to the legitimate governmental objective of preventing local law enforcement officers from using radar to operate local revenue producing "speed traps." *Wiggins v. State*, 249 Ga. 302, 290 S.E.2d 427 (1982).

Subsection (b) limitations. — Although O.C.G.A. § 40-14-5 requires a law enforcement officer using a radar device to notify each person against whom the officer intends to make a case that the person has a right to request the officer to test the radar device for accuracy, the right does not extend to a test of the tuning forks or any other instrument used to test the radar device; nor does the statute entitle the defendant to observe the accuracy test performed on the radar device. *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Objection to radar evidence required at trial level. — Defendant must invoke an evidentiary ruling on the admissibility of radar evidence in order to preserve the adverse ruling on defendant's objection for appeal. *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Noncompliance with subsection (b) harmless when speeding admitted. — In view of the defendant's admission that

the defendant was "doing 50 or 51" in a 35 m.p.h. zone, any error the trial judge may have committed in considering the results of a radar check were considered harmless, notwithstanding the defendant's assertion that the arresting officer failed to comply with O.C.G.A. § 40-14-5(b). *Carver v. State*, 198 Ga. App. 254, 401 S.E.2d 300 (1990).

In a speeding and eluding prosecution, though an officer might not have advised the defendant of the defendant's right under O.C.G.A. § 40-14-5(b) to test a radar device for accuracy, any error in admitting the radar evidence was harmless as the defendant admitted speeding and the passenger said the car was traveling about 75 to 80 miles per hour (mph), which exceeded the 65 mph speed limit. *Segel v. State*, 293 Ga. App. 506, 667 S.E.2d 670 (2008).

Failure to prove foundation for admission of radar evidence. — There was no support for the defendant's argument that failure to properly prove the foundation for admission of radar evidence should result in a motion to suppress since the only issue was the legitimacy of the initial stop, not whether the radar evidence was admissible without adequate foundation on the substantive charge of speeding. *Hennings v. State*, 236 Ga. App. 473, 512 S.E.2d 357 (1999).

Cited in *Quinn v. State*, 234 Ga. App. 360, 506 S.E.2d 890 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Subsection (b) does not require citizen access to patrol vehicle. — Subsection (b) requires each county, municipal, or campus law enforcement officer making cases by use of radar to advise a

citizen, prior to issuance of a citation, of the right to a test of the device for accuracy and that the officer must, upon request, perform such a test; however, the officer is not required by law to permit the

citizen access to the patrol vehicle in order to witness the officer conducting the test. 1991 Op. Att'y Gen. No. U91-7.

40-14-6. Warning signs required.

(a) Each county, municipality, college, and university using speed detection devices shall erect signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the corporate limits of the municipality, the county boundary, or the boundary of the college or university campus. Such signs shall be at least 24 by 30 inches in area and shall warn approaching motorists that speed detection devices are being employed. No such devices shall be used within 500 feet of any such warning sign erected pursuant to this subsection.

(b) In addition to the signs required under subsection (a) of this Code section, each county, municipality, college, and university using speed detection devices shall erect speed limit warning signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the corporate limits of the municipality, the county boundary, or the boundary of the college or university campus. Such signs shall be at least 24 by 30 inches in area, shall warn approaching motorists of changes in the speed limit, shall be visible plainly from every lane of traffic, shall be viewable in any traffic conditions, and shall not be placed in such a manner that the view of such sign is subject to being obstructed by any other vehicle on such highway. No such devices shall be used within 500 feet of any such warning sign erected pursuant to this subsection. (Ga. L. 1968, p. 425, § 5; Ga. L. 1970, p. 435, § 4; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 9; Ga. L. 2003, p. 450, § 5.)

JUDICIAL DECISIONS

Incomplete compliance. — Although there is evidence that some sites on the city limits of the municipality should have had signs but did not, since there is also evidence that other locations contained signs comporting with the statute, incomplete compliance with O.C.G.A. § 40-14-6 does not require exclusion of evidence gathered by use of a speed detection device. *Ferguson v. State*, 163 Ga. App. 171, 292 S.E.2d 87 (1982).

Evidence of speeding was admissible even though the city was not in total literal compliance with the requirements of O.C.G.A. § 40-14-6 that signs be erected on every highway at the point on

the highway which intersects the corporate limits of the city. *Royston v. State*, 166 Ga. App. 386, 304 S.E.2d 732 (1983).

When a defendant convicted of speeding claimed there was no evidence that the public was put on notice that speed detection devices were in use near the location where the defendant was stopped, under O.C.G.A. § 40-14-6(a), incomplete compliance with this provision, requiring the posting of warnings that speed detection devices were in use, did not require the exclusion of evidence obtained by the use of speed detection devices. *Ferguson v. State*, 263 Ga. App. 40, 587 S.E.2d 195 (2003).

Despite the defendant's claim that the state failed to comply with O.C.G.A. § 40-14-6, the officer's testimony that the defendant had been speeding was admissible because the officer testified that the officer verified the existence and extent of a 35 mph speed limit zone at the county line by riding on both sides of that line and physically verifying the posted speed limits in the area. *Frasard v. State*, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

Placement of detection device. — O.C.G.A. § 40-14-6 requires that a speed detection device itself be more than 500 feet from the county or municipal boundary, but does not forbid the penetration of a radar beam into the 500-foot zone. *State v. Vickery*, 184 Ga. App. 468, 361 S.E.2d

678, cert. denied, 184 Ga. App. 910, 361 S.E.2d 678 (1987).

Applicability to state law enforcement officers. — O.C.G.A. § 40-14-6 is not applicable to state law enforcement officers and therefore although the radar was not operated within 500 feet of a radar speed device warning sign, such failure would not invalidate the radar evidence. *Walker v. State*, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

Because a trooper was employed by the state, and not a county, municipality, college, or university, the limitations under O.C.G.A. § 40-14-6 did not apply. *Wilshin v. State*, 289 Ga. App. 683, 658 S.E.2d 224 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 269.

C.J.S. — 60 C.J.S., Motor Vehicles,

§§ 28 et seq., 69 et seq., 68. 61A C.J.S., Motor Vehicles, §§ 1641 et seq.

40-14-7. Visibility of vehicle from which device is operated.

No stationary speed detection device shall be employed by county, municipal, college, or university law enforcement officers where the vehicle from which the device is operated is obstructed from the view of approaching motorists or is otherwise not visible for a distance of at least 500 feet. (Ga. L. 1968, p. 425, § 7; Ga. L. 1978, p. 1968, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1992, p. 2785, § 30.)

JUDICIAL DECISIONS

Legislative intent. — General Assembly, in enacting Ga. L. 1968, p. 425, § 7 (see O.C.G.A. § 40-14-7), was concerned with eradicating the so-called "speed trap" wherein unwary motorists are lured into a speed trap designed not so much to control traffic but to generate fees from traffic fines. *Darden v. Rapkin*, 148 Ga. App. 127, 251 S.E.2d 94 (1978).

Stationary police radar devices are the concern of Ga. L. 1968, p. 425, § 7 (see O.C.G.A. § 40-14-7). *Darden v. Rapkin*, 148 Ga. App. 127, 251 S.E.2d 94 (1978).

Proof of visibility. — State is required to present the necessary foundation, including proof of the visibility of the police vehicle as required by O.C.G.A. § 40-14-7,

before evidence of speed gained through the use of a speed detection device is admissible. *Johnson v. State*, 189 Ga. App. 192, 375 S.E.2d 290 (1988), overruled on other grounds, *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Objection to radar evidence required at trial level. — Defendant must invoke an evidentiary ruling on the admissibility of radar evidence in order to preserve the adverse ruling on the defendant's objection for appeal. *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Speed detection device inadmissible. — Defendant's argument that an officer violated O.C.G.A. § 40-14-7 by ob-

structing the officer's vehicle from the view of approaching motorists was overruled because the trial court found the speed-detection device results inadmissible, and the defendant's conviction was not based on the use of such a device.

Stone v. State, 257 Ga. App. 492, 571 S.E.2d 488 (2002).

Cited in Wiggins v. State, 249 Ga. 302, 290 S.E.2d 427 (1982); Hernandez-Lopez v. State, 319 Ga. App. 662, 738 S.E.2d 116 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Applicability. — Visibility restrictions of Ga. L. 1968, p. 425, § 7 (see O.C.G.A. § 40-14-7) do not apply to the Department of Public Safety. 1975 Op. Att'y Gen. No. 75-10.

Ga. L. 1968, p. 425 (see O.C.G.A. Ch. 14, T. 40) places no restrictions on the use of Vascar and radar by the Department of Public Safety. 1975 Op. Att'y Gen. No. 75-10.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1641 et seq.

40-14-8. When case may be made and conviction had.

(a) No county, city, or campus officer shall be allowed to make a case based on the use of any speed detection device, unless the speed of the vehicle exceeds the posted speed limit by more than ten miles per hour and no conviction shall be had thereon unless such speed is more than ten miles per hour above the posted speed limit.

(b) The limitations contained in subsection (a) of this Code section shall not apply in properly marked school zones one hour before, during, and one hour after the normal hours of school operation, in properly marked historic districts, and in properly marked residential zones. For purposes of this chapter, thoroughfares with speed limits of 35 miles per hour or more shall not be considered residential districts. For purposes of this Code section, the term "historic district" means a historic district as defined in paragraph (5) of Code Section 44-10-22 and which is listed on the Georgia Register of Historic Places or as defined by ordinance adopted pursuant to a local constitutional amendment. (Ga. L. 1968, p. 425, § 1; Ga. L. 1970, p. 435, § 1; Ga. L. 1978, p. 2254, § 1; Ga. L. 1979, p. 771, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1992, p. 2785, § 30; Ga. L. 2000, p. 1257, § 1.)

JUDICIAL DECISIONS

Application to prosecution for driving under the influence. — City police officer's testimony that the defendant was exceeding the speed limit by 10 miles per hour as shown by radar could not be used with evidence of a positive urine sample to support the defendant's conviction for

driving under the influence of drugs. Webb v. State, 223 Ga. App. 9, 476 S.E.2d 781 (1996).

No application to state troopers. — Although a defendant was only traveling 10 miles per hour above the posted speed limit when the defendant's vehicle was

stopped by a state police trooper for speeding, since O.C.G.A. § 40-14-8(a) did not apply to state troopers, the stop was valid; § 40-14-8(a) only applied to county, city, or campus officers. *Hayes v. State*, 292 Ga. App. 724, 665 S.E.2d 422 (2008).

Stop of vehicle justified. — Even though an officer, mistaken as to the speed limit where the radar operation was established, was prohibited by O.C.G.A. § 40-14-8 from making a case against a vehicle going only nine miles per hour over the limit, nothing prevented the officer from stopping the vehicle for speeding.

Freeland v. State, 223 Ga. App. 326, 477 S.E.2d 633 (1996).

When an officer clocked the defendant driving 10 miles per hour over the speed limit, this provided the officer with a legal reason to stop the defendant to warn the defendant of exceeding the speed limit, even though, under O.C.G.A. § 40-14-8(a), the defendant could not be convicted of speeding; therefore, it was proper to deny the defendant's motion to suppress the results of this stop. *Berry v. State*, 274 Ga. App. 831, 619 S.E.2d 339 (2005).

RESEARCH REFERENCES

ALR. — Proof, by radar or other mechanical or electronic devices, of violation of speed regulations, 47 ALR3d 822.

40-14-9. Evidence obtained in certain areas inadmissible; use of device on hill.

Evidence obtained by county or municipal law enforcement officers in using speed detection devices within 300 feet of a reduction of a speed limit inside an incorporated municipality or within 600 feet of a reduction of a speed limit outside an incorporated municipality or consolidated city-county government shall be inadmissible in the prosecution of a violation of any municipal ordinance, county ordinance, or state law regulating speed; nor shall such evidence be admissible in the prosecution of a violation as aforesaid when such violation has occurred within 30 days following a reduction of the speed limit in the area where the violation took place, except that this 30 day limitation shall not apply to a speeding violation within a highway work zone, as defined in Code Section 40-6-188, or in an area with variable speed limits, as defined in Code Section 40-6-182. No speed detection device shall be employed by county, municipal, or campus law enforcement officers on any portion of any highway which has a grade in excess of 7 percent. (Ga. L. 1968, p. 425, § 6; Ga. L. 1970, p. 435, § 5; Ga. L. 1978, p. 2256, § 1; Ga. L. 1979, p. 771, § 2; Ga. L. 1989, p. 586, § 1; Ga. L. 2003, p. 450, § 6; Ga. L. 2010, p. 442, § 6/HB 1174.)

JUDICIAL DECISIONS

Proof device not used on hill required. — Given the plain language of O.C.G.A. § 40-14-9, proof that a speed detection device was not employed on a portion of a highway having a grade in

excess of seven percent is a condition imposed by the law for the results of the radar test to be admissible. *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Claim that grade exceeded seven percent not proven. — When a defendant was convicted of speeding after the defendant was stopped by an officer using a speed detection device and claimed that the angle of the street in the area where the defendant was arrested showed greater than a seven percent grade, the defendant did not show that this method of measuring the street's grade was an acceptable method, the officer's un rebutted testimony was that the area where the device was used was level, and the results of the speed detection device

were cumulative of the officer's unassisted observation of the defendant's speed, which alone was sufficient to sustain the defendant's conviction. *Ferguson v. State*, 263 Ga. App. 40, 587 S.E.2d 195 (2003).

Objection to radar evidence required at trial level. — Defendant must invoke an evidentiary ruling on the admissibility of radar evidence in order to preserve the adverse ruling on the defendant's objection for appeal. *Carver v. State*, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 977 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1641 et seq., 1650 et seq.

ALR. — Presumption and burden of proof of accuracy of scientific and mechan-

ical instruments for measuring speed, temperature, time, and the like, 21 ALR2d 1200.

Proof, by radar or other mechanical or electronic devices, of violation of speed regulations, 47 ALR3d 822.

40-14-10. Unlawful use of devices generally.

It shall be unlawful for speed detection devices to be used in any county or municipality or on any campus for which a permit authorizing such use has not been issued or for which a permit authorizing such use has been suspended or revoked and not reissued. It shall be unlawful for any official of such county, municipality, college, or university to order such speed detection devices to be used. It shall be unlawful for any law enforcement officer of any such county, municipality, college, or university to use any such speed detection devices. Any such official or law enforcement officer violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1977, p. 800, § 4; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 980, 981.

40-14-11. Investigations by commissioner of public safety; issuance of order suspending or revoking permit; ratio of speeding fines to agency's budget.

(a) Upon a complaint being made to the commissioner of public safety that any county, municipality, college, or university is employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety or in a manner which violates this

chapter or violates its speed detection device permit, the commissioner or the commissioner's designee is authorized and empowered to conduct an investigation into the acts and practices of such county, municipality, college, or university with respect to speed detection devices. If, as a result of this investigation, the commissioner or the commissioner's designee finds that there is probable cause to suspend or revoke the speed detection device permit of such county, municipality, college, or university, he or she shall issue an order to that effect.

(b) Upon the suspension or revocation of any speed detection device permit for the reasons set forth in this Code section, the commissioner of public safety shall notify the executive director of the Georgia Peace Officer Standards and Training Council of the action taken.

(c) Upon receipt from the executive director of the Georgia Peace Officer Standards and Training Council that an officer's certification to operate speed detection devices has been withdrawn or suspended pursuant to Code Section 35-8-12, the commissioner of public safety or the commissioner's designee shall suspend the speed detection device permit for the employing agency. The period of suspension or revocation shall be consistent with the action taken by the Georgia Peace Officer Standards and Training Council.

(d) There shall be a rebuttable presumption that a law enforcement agency is employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety if the fines levied based on the use of speed detection devices for speeding offenses are equal to or greater than 40 percent of that law enforcement agency's budget; provided, however, that fines for speeding violations exceeding 17 miles per hour over the established speed limit shall not be considered when calculating total speeding fine revenue for the agency. (Ga. L. 1968, p. 425, § 8; Ga. L. 1977, p. 800, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 11; Ga. L. 1999, p. 1227, § 3.)

Law reviews. — For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 192 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit revocation exclusive. — Only manner in which a speed detection device permit may be revoked or suspended is by an executive order specifically directing such revocation or suspen-

sion pursuant to the revocation procedures of Ga. L. 1968, p. 425, § 8 (see O.C.G.A. §§ 40-14-11 through 40-14-13). 1974 Op. Att'y Gen. No. 74-74.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1650 et seq.

40-14-12. Administrative hearing upon permit suspension or revocation.

Upon issuance by the commissioner of public safety of an order suspending or revoking the speed detection device permit of any county, municipality, college, or university, the county, municipality, college, or university affected shall be afforded a hearing, to be held within ten days of the effective date of the order. The hearing shall be held before the commissioner or deputy commissioner of public safety, and, following the hearing, the county, municipality, college, or university affected shall be served with a written decision announcing whether the permit shall remain revoked or whether it shall be reinstated. (Ga. L. 1968, p. 425, § 9; Ga. L. 1977, p. 800, § 2; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 12.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “and, following the hearing,” was substituted for

“and following the hearing” in the second sentence.

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit revocation exclusive. — Only manner in which a speed detection device permit may be revoked or suspended is by an executive order specifically directing such revocation or suspen-

sion pursuant to the revocation procedures of Ga. L. 1968, p. 425, §§ 8 through 10 (see O.C.G.A. §§ 40-14-11 through 40-14-13). 1975 Op. Att’y Gen. No. 74-74.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1648 et seq.

40-14-13. Administrative and judicial appeal of decision suspending or revoking permit.

Any county, municipality, college, or university aggrieved by a decision of the commissioner or deputy commissioner of public safety suspending or revoking its speed detection device permit may appeal that decision within 30 days of its effective date to the Board of Public Safety, which shall schedule a hearing with respect thereto before the board. Following a hearing before the board, the county, municipality, college, or university affected shall be served with a written decision announcing whether the permit shall remain revoked or whether it shall be reinstated. An adverse decision of the board may be appealed by the county, municipality, college, or university to the superior court with appropriate jurisdiction, but the municipality, county, college, or university shall be denied the use of the speed detection device until after such appeal is decided by the court. (Ga. L. 1968, p. 425, § 10; Ga. L. 1977, p. 800, § 3; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 13.)

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit revocation exclusive. — Only manner in which a speed detection device permit may be revoked or suspended is by an executive order specifically directing such revocation or suspen-

sion pursuant to the revocation procedures of Ga. L. 1968, p. 425, §§ 8 through 10 (see O.C.G.A. §§ 40-14-11 through 40-14-13). 1974 Op. Att'y Gen. No. 74-74.

40-14-14. Petition for reconsideration following permit suspension or revocation.

At the expiration of six months following the suspension or revocation of a speed detection device permit by the Board of Public Safety or, if no appeal was taken, by the commissioner or deputy commissioner of public safety, the governing authority of any such county or municipality or the president of any such college or university may, upon a change of circumstances being shown to the commissioner, petition the commissioner for a reconsideration of whether such county, municipality, college, or university should be permitted to use speed detection devices within their respective jurisdictions. (Ga. L. 1968, p. 425, § 11; Ga. L. 1977, p. 800, § 5; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 14.)

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit reinstatement exclusive. — Once a local government unit's speed detection device permit has been

revoked, the permit may only be reinstated subsequent to a petition for reconsideration. 1974 Op. Att'y Gen. No. 74-74.

40-14-15. Rehearing or restoration of permit at direction of Governor.

The Governor, in his discretion, may direct the commissioner of public safety, or his delegate, to inquire into such change of circumstances and report the same to him together with any recommendations he might have. The Governor, in his discretion, may order a new hearing on the matter before the Board of Public Safety or may, without hearing, issue his order directing the commissioner to grant a permit to such a county, municipality, college, or university to use speed detection devices. If a county, municipality, college, or university shall not be granted a permit to use such devices, it shall not apply for a rehearing until the expiration of six months. (Ga. L. 1968, p. 425, § 12; Ga. L. 1989, p. 586, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit reinstatement exclusive. — Once a local government unit's speed detection device permit has been

revoked, the permit may only be reinstated subsequent to a petition for reconsideration. 1974 Op. Att'y Gen. No. 74-74.

40-14-16. Restrictions on suspension or revocation of drivers' licenses; reports to Department of Driver Services to specify speed.

No speeding violation of less than ten miles per hour above the legal speed limit in the county or municipality or on a college or university campus in which a person is given a speeding ticket shall be used by the Department of Driver Services for the purpose of suspending or revoking the driver's license of the violator. No speeding violation report by a county, municipality, or college or university campus to the Department of Driver Services which fails to specify the speed of the violator shall be used by the Department of Driver Services to revoke the driver's license of a violator. (Ga. L. 1968, p. 425, § 13; Ga. L. 1989, p. 586, § 1; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 23-1/HB 501.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 116 et seq. **C.J.S.** — 60 C.J.S., Motor Vehicles, §§ 353, 354.

40-14-17. Laser devices; reliability and admissibility of evidence.

Evidence of speed based on a speed detection device using the speed timing principle of laser which is of a model that has been approved by the Department of Public Safety shall be considered scientifically acceptable and reliable as a speed detection device and shall be admissible for all purposes in any court, judicial, or administrative proceedings in this state. A certified copy of the Department of Public Safety list of approved models of such laser devices shall be self-authenticating and shall be admissible for all purposes in any court, judicial, or administrative proceedings in this state. (Code 1981, § 40-14-17, enacted by Ga. L. 1999, p. 5, § 1.)

Law reviews. — For annual survey of evidence, see 51 Mercer L. Rev. 279 (1999).

JUDICIAL DECISIONS

Admissibility of evidence. — When the state introduced, without objection, a certified Department of Public Safety order listing the approved models of laser detection devices, and that list included the device used to measure the defendant's speed, the evidence of speed based on that device was considered to be scientifically acceptable and reliable. *Van Nort v. State*, 250 Ga. App. 7, 550 S.E.2d 111 (2001). Although the state failed to provide a proper foundation for the introduction of laser detection evidence, other evidence at trial was sufficient to sustain the defendant's conviction for speeding because the

police officer who observed the defendant's vehicle testified that the vehicle was traveling at an "obvious high rate of speed" and faster than the speed limit. In the Interest of J.D.S., 273 Ga. App. 576, 615 S.E.2d 627 (2005).

ARTICLE 3

TRAFFIC-CONTROL SIGNAL MONITORING DEVICES

40-14-20. Definitions.

As used in this article, the term:

(1) "Governing authority" means any county, municipality, or consolidated government.

(2) "Recorded images" has the meaning provided in subparagraph (f)(1)(B) of Code Section 40-6-20.

(3) "Traffic-control signal monitoring device" has the meaning provided in subparagraph (f)(1)(C) of Code Section 40-6-20. (Code 1981, § 40-14-20, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2008, p. 1184, § 3/HB 77.)

40-14-21. Traffic-control signal monitoring devices; application and permit for operation.

(a) A governing authority must obtain an operating permit from the Department of Transportation prior to using any traffic-control signal monitoring device. The governing authority shall not use traffic-control signal monitoring devices unless the chief law enforcement officer of such governing authority desires the use of such devices and such use is approved by a properly adopted resolution of the governing authority.

(b) The governing authority shall also conduct a public hearing on the proposed use of such devices prior to entering any contract on or after July 1, 2001, for the use or purchase of such devices.

(c) The Department of Transportation is authorized to prescribe by appropriate rules and regulations the manner and procedure in which applications shall be made for traffic-control signal monitoring device permits and to prescribe the required information to be submitted by an applicant consistent with the requirements of this title. The Department of Transportation may deny an application or suspend or revoke a permit for failure of the governing authority to provide requested information or documentation or for any other violation of this article or violation of the rules and regulations of the department.

(d) An application for the operation of a traffic-control signal monitoring device by a governing authority shall name the intersection at which the device is to be used and provide demonstrable evidence that

there is a genuine safety need for the use of such device at the designated intersection. The documented safety need for each designated intersection shall be approved by the Department of Transportation in accordance with nationally recognized safety standards. For each designated intersection, the governing authority shall conduct a traffic engineering study to determine whether, in addition to or as an alternative to the traffic-control signal monitoring device, there are other possible design or operational changes likely to reduce the number of accidents or red light violations at that intersection. This report shall be submitted with the application for an operation permit required under these provisions and any request to amend the operation permit to include an additional intersection.

(e) The revenue generated by the use of a traffic-control signal monitoring device shall not be considered when determining whether to issue a permit for the operation of such devices at a designated intersection. The only consideration shall be the increased life-saving safety value by the use of such a device at the designated intersection.

(f) Permits shall be issued by the Department of Transportation within three months of receiving a completed permit application from a governing authority where such governing authority is otherwise in compliance with the provisions of this article. An application for amendment to an existing permit and an application for a renewal permit following a suspension or revocation of a permit shall also be processed within three months of receipt of such application, provided that the application is complete and complies with the provisions of this article. A permit shall authorize use of a traffic-control signal monitoring device for only those designated intersections approved as having a documented life-saving safety need by the Department of Transportation.

(g) No governing authority shall be authorized to use traffic-control signal monitoring devices where any arresting officer or official of the court having jurisdiction of traffic cases is paid on a fee system. This subsection shall not apply to any official receiving a recording fee.

(h) If a governing authority elects to use traffic-control signal monitoring devices, no portion of any civil monetary penalty collected through the use of such devices may be paid to the manufacturer or vendor of the traffic-control signal monitoring devices. The compensation paid by the governing authority for such devices shall be based on the value of such equipment and shall not be based on the number of citations issued or the revenue generated by such devices.

(i) Charges for violations based on evidence obtained from a traffic-control signal monitoring device shall not be made by a law enforcement agency unless the law enforcement agency employs at least one full-time certified peace officer.

(j) A traffic-control signal monitoring device shall not be used to produce any photograph, microphotograph, electronic image, or videotape showing the identity of any person in a motor vehicle.

(k) A governing authority utilizing traffic-control signal monitoring devices shall at all times cooperate fully with the Department of Transportation. The department is authorized, at any time, to inspect traffic-control signal monitoring devices used by a governing authority and any records pertaining to revenues collected from the use of such devices.

(l) A permit may be amended at any time by amended application submitted by a governing authority. The request to amend an application and to add a new intersection to the list of authorized intersections for the operation of a traffic-control signal monitoring device shall be considered by the department in the same manner as original permit applications.

(m) A permit shall be reviewed by the Department of Transportation once every three years from the date of issuance or date of the most recent extension unless the permit has been revoked or suspended by the department. The review shall be conducted in the same manner as the original permit application.

(n) The department is authorized to set reasonable application fees to compensate the department for necessary costs in issuing, amending, or reviewing a permit to operate traffic-control signal monitoring devices.

(o) Any governing authority operating a traffic-control signal monitoring device on December 31, 2008, shall have until January 1, 2010, to obtain a permit for the operation of such device as required by this Code section. (Code 1981, § 40-14-21, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2003, p. 597, § 3; Ga. L. 2004, p. 498, § 2; Ga. L. 2008, p. 1184, § 4/HB 77.)

40-14-22. Timing of traffic-control signals.

The timing of any traffic-control signal which is being monitored by a traffic-control signal monitoring device shall conform to regulations promulgated by the Department of Transportation pursuant to Code Section 32-6-50. The duration of the yellow or red light of any traffic-control device at which a traffic-control signal monitoring device is installed shall not be decreased prior to the installation of a device or during the time for which the device is operated. The Department of Transportation shall establish minimal yellow light change interval times for traffic-control devices at intersections where a traffic-control signal monitoring device is utilized. The minimal yellow light change

interval time shall be established in accordance with nationally recognized engineering standards, and any such established time shall not be less than the recognized national standard plus one additional second. Each governing authority using a traffic-control signal monitoring device shall at its own expense test the device for accuracy at regular intervals and record and maintain the results of each test. Such test results shall be public records subject to inspection as provided by Article 4 of Chapter 18 of Title 50. Each such test shall be made in accordance with the manufacturer's recommended procedure. Any such device not meeting the manufacturer's minimum accuracy requirements shall be removed from service and thereafter shall not be used by the governing authority, nor shall any charges for violations based on evidence from such device be made by a law enforcement agency, until such device has been serviced and calibrated at the expense of the governing authority by a qualified technician. (Code 1981, § 40-14-22, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2008, p. 1184, § 5/HB 77.)

40-14-23. Use of signs to notify motorists of traffic-control signal monitoring devices.

Each governing authority using traffic-control signal monitoring devices shall erect signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the jurisdictional limits of the governing authority. A sign shall be erected also by such entity on each public road on the approach to the next traffic-control signal for such road when a traffic-control signal monitoring device is monitoring such next signal for such road and signs shall also be erected at any other location required by the Department of Transportation. Such signs shall be of a design specified by the Department of Transportation in accordance with nationally recognized standards. (Code 1981, § 40-14-23, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2008, p. 1184, § 6/HB 77.)

40-14-24. Reporting of traffic-control signal monitoring device use to Department of Transportation.

(a) Each governing authority using any traffic-control signal monitoring device shall submit not later than February 1 of each year a report on such use during the preceding calendar year to the Department of Transportation. Such report shall include, without limitation:

- (1) A description of the locations where traffic-control signal monitoring devices were used;
- (2) The number of violations recorded at each location and in the aggregate on a monthly basis;
- (3) The total number of citations issued;

(4) The number of civil monetary penalties and total amount of such penalties paid after citation without contest;

(5) The number of violations adjudicated and results of such adjudications, including a breakdown of dispositions made;

(6) The total amount of civil monetary penalties paid; and

(7) The quality of the adjudication process and its results.

(b) If any governing authority fails to provide the report provided for in subsection (a) of this Code section all revenues generated from the operation of any traffic-control signal monitoring device from the date the report was due shall be forwarded to the general fund of the state. The governing authority shall not be entitled to retain any revenue until the annual report is filed and accepted by the Department of Transportation.

(c) The Department of Transportation shall forward copies of all reports to the offices of the Governor, Lieutenant Governor, and the Speaker of the House by March 1 of each year. The department shall also forward to the offices of the Governor, Lieutenant Governor, and the Speaker of the House a complete list of all traffic-control signal monitoring devices currently in use. (Code 1981, § 40-14-24, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2003, p. 597, § 4; Ga. L. 2008, p. 1184, § 7/HB 77.)

40-14-25. Complaints about traffic-control signal monitoring devices; rebuttable presumption; remission of revenues.

(a) Complaints surrounding the use and operation of traffic-control signal monitoring devices by governing authorities, including the use by a governing authority for any purpose other than the promotion of the public health, welfare, and safety or in a manner which violates this article or violates its operating permit, may be made to the commissioner of transportation. The commissioner or the commissioner's designee is authorized to conduct an investigation into the acts and practices of the governing authority with respect to the use of traffic-control signal monitoring devices. If, as a result of this investigation, there is evidence to substantiate a violation of this article or the rules and regulations of the Department of Transportation, the department may take any action deemed necessary to prevent further misconduct or violations, including denying an application for a permit or suspension or revocation of a permit.

(b) There shall be a rebuttable presumption that a governing authority is using traffic-control signal monitoring devices for purposes other than the promotion of the public health, welfare, and safety if such devices are used by a governing authority without a valid permit issued

by the Department of Transportation or in violation of any requirement of this article or the rules and regulations of the department.

(c) Where a violation of this article by a governing authority or any law enforcement agency enforcing the use of traffic-control signal monitoring devices on behalf of such governing authority is substantiated, the Department of Transportation may order that revenues generated from the use of traffic-control signal monitoring devices during the time of such violation or misconduct shall be remitted to the state's general fund. The department's order to remit funds shall be a continuous order until the violation is corrected by the governing authority as determined by the department. Any governing authority failing to abide by such order shall be liable for interest and costs, including reasonable attorney fees, incurred in the enforcement of the order. Jurisdiction for enforcing the department's order shall be in the Superior Court of Fulton County. (Code 1981, § 40-14-25, enacted by Ga. L. 2008, p. 1184, § 8/HB 77; Ga. L. 2009, p. 8, § 40/SB 46.)

40-14-26. Revoking traffic-control signal monitoring device permit; hearing; reconsideration.

(a) Upon issuance by the commissioner of transportation of an order denying an application for or suspending or revoking a traffic-control signal monitoring device permit, the governing authority affected shall be afforded a hearing, to be held within 30 days of the effective date of the order. The hearing shall be held before the commissioner of the department or his or her designee, and, within 30 days following the hearing, the governing authority affected shall be served with a written decision announcing whether the permit shall remain denied, suspended, or revoked or whether it shall be granted or reinstated.

(b) Only after the expiration of three years following the revocation of a traffic-control signal monitoring device permit shall the governing authority make application, upon a change of circumstances being shown, to the commissioner of transportation for a reconsideration of whether the governing authority should be permitted to use traffic-control signal monitoring devices. (Code 1981, § 40-14-26, enacted by Ga. L. 2008, p. 1184, § 8/HB 77; Ga. L. 2009, p. 8, § 40/SB 46.)

CHAPTER 15

MOTORCYCLE OPERATOR SAFETY TRAINING PROGRAM

Sec.		Sec.	
40-15-1.	Definitions.		mulgate rules, prescribe fees, and set student requirements.
40-15-2.	Establishment and operation of programs; provisions of programs; certificates of completion.	40-15-4.	Coordinator authorized; duties and requirements.
40-15-3.	Authorization of board to pro-	40-15-5.	Requirements for instructors.

Editor’s notes. — This chapter was to take effect upon adequate appropriations being made by the General Assembly. As a means of revising the Code sections in this chapter, Ga. L. 1986, p. 181 was enacted as an amendment to the 1984 Act (Ga. L. 1984, p. 644) enacting this chapter, rather than as an amendment to the Code itself. Section 2 of Ga. L. 1986, p. 181 provided that that Act “shall become effective upon

its approval by the Governor [March 18, 1986] or upon its becoming law without such approval; provided, however, that no provision of this Act shall affect or supersede Section 2 of the said 1984 Act [which provided the appropriations-based effective date].” Initial funds were appropriated in 1986 for a program coordinator. Additional funds were appropriated in 1987 for implementation of this chapter.

40-15-1. Definitions.

As used in this chapter, the term:

- (1) “Board” means the Board of Driver Services.
- (2) “Commissioner” means the commissioner of driver services.
- (3) “Coordinator” means the state-wide motorcycle safety coordinator provided for in Code Section 40-15-4.
- (4) “Department” means the Department of Driver Services.
- (5) “Motorcycle” means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor and a moped.
- (6) “Operator” means any person who drives or is in actual physical control of a motorcycle.
- (7) “Program” means a motorcycle operator safety training program provided for in Code Section 40-15-2. (Code 1981, § 40-15-1, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 1505, § 1; Ga. L. 2000, p. 951, § 8-1; Ga. L. 2005, p. 334, § 23-2/HB 501.)

40-15-2. Establishment and operation of programs; provisions of programs; certificates of completion.

(a)(1) The department is authorized to set up, establish, and operate a motorcycle operator safety training program for the purpose of assisting motorcycle operators to meet the requirements for licensed driving of motorcycles in this state.

(2) The coordinator, with the approval of the commissioner, shall be authorized to set up, establish, and operate additional motorcycle operator safety training programs.

(b) Any such programs shall provide courses on motorcycle operator safety. The programs shall be based on the Motorcycle Safety Foundation Motorcycle Rider Course or its equivalent in quality, utility, and merit.

(c) The department shall issue a certificate of completion to each person who satisfactorily completes the motorcycle operator safety training program. (Code 1981, § 40-15-2, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1997, p. 1505, § 2.)

40-15-3. Authorization of board to promulgate rules, prescribe fees, and set student requirements.

The board is authorized to adopt, promulgate, and establish rules and regulations for the operation of any motorcycle operator safety training program; to provide for the entrance and enrollment of students; to prescribe fees for the course; and to prescribe the ages, requirements, and conditions under which students may be received for instruction in any such program. (Code 1981, § 40-15-3, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1.)

40-15-4. Coordinator authorized; duties and requirements.

(a) The commissioner shall appoint a state-wide motorcycle safety coordinator who shall carry out and enforce the provisions of this chapter and the rules and regulations of the department. The coordinator shall be placed in the unclassified service as defined by Code Section 45-20-2 and shall serve at the pleasure of the commissioner.

(b) The coordinator shall also be authorized to:

(1) Promote motorcycle safety throughout the state;

(2) Provide consultation to the various departments of state government and local political subdivisions relating to motorcycle safety; and

(3) Do any other thing deemed necessary by the commissioner to promote motorcycle safety in the state. (Code 1981, § 40-15-4, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 1505, § 3; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-62/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration” in the second sentence of subsection (a).

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

40-15-5. Requirements for instructors.

Every person who desires to qualify as an instructor in a motorcycle operator safety training program shall meet the following requirements:

- (1) Be of good moral character;
- (2) Give satisfactory performance on a written, oral, performance, or combination examination administered by the coordinator testing both knowledge of the field of motorcycle operator education and skills necessary to instruct and impart motorcycle driving skills and safety to students. The instructor training program shall provide for a course of instruction based on the Motorcycle Safety Foundation’s Instructor Course or its equivalent in quality, utility, and merit. This course of instruction shall be held periodically based on the applications received and the need for instructors, and an examination fee prescribed by the coordinator shall be charged;
- (3) Be physically able to operate safely a motorcycle and to instruct others in the operation of motorcycles; and
- (4) Hold a valid Class M driver’s license. (Code 1981, § 40-15-5, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L. 1994, p. 97, § 40.)

CHAPTER 16

DEPARTMENT OF DRIVER SERVICES

Sec.		Sec.	
40-16-1.	Definitions.	40-16-5.	Authority of commissioner.
40-16-2.	Primary responsibilities.	40-16-5.1.	Use of department vehicles and equipment.
40-16-2.1.	Annual reports to the General Assembly.	40-16-6.	Civil monetary penalties.
40-16-3.	Board of Driver Services; commissioner.	40-16-7.	Budget of department.
40-16-4.	Duties of commissioner.	40-16-8.	Governor's Commercial Transportation Advisory Committee.

Administrative rules and regulations. — Rules of General Applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Motor Vehicle Safety, Chapter 375-1-1.

40-16-1. Definitions.

As used in this chapter, the term:

- (1) "Board" means the Board of Driver Services.
- (2) "Commissioner" means the commissioner of driver services.
- (3) "Department" means the Department of Driver Services. (Code 1981, § 40-16-1, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2005, p. 334, § 1-1/HB 501.)

40-16-2. Primary responsibilities.

(a) There is created the Department of Driver Services. The Department of Driver Services shall be a successor agency to and continuation of the former Department of Motor Vehicle Safety. The department shall be the agency primarily responsible for:

- (1) Administration of the laws and regulations relating to drivers' licenses, as provided for in Chapter 5 of this title;
- (2) Administration of the laws and regulations relating to proof of financial responsibility, as provided for in Chapter 9 of this title;
- (3) Administration of laws relating to ignition interlock devices for use by driving under the influence offenders;
- (4) Administration of laws relating to driver training schools, driver improvement clinics, DUI Alcohol or Drug Use Risk Reduction Programs, and commercial driving schools;
- (5) Administration of laws relating to motorcycle safety programs;

(6) Administration of laws and regulations relating to issuance of limousine chauffeur permits; and

(7) Administration of any other laws specifically providing for their administration by the department.

(b) Responsibility for the following functions formerly exercised by the Department of Motor Vehicle Safety is transferred as follows:

(1) Promulgation of regulations relating to the size and the weights of motor vehicles, trailers, and loads as provided for in Article 2 of Chapter 6 of Title 32 shall be vested in the Department of Transportation; and administrative enforcement of such regulations and the law enforcement function of apprehending and citing violators of such laws and regulations are transferred to the Department of Public Safety, as well as the function of promulgating regulations relative to its enforcement function;

(2) Enforcement of laws and regulations relating to licensing and fuel tax registration requirements is transferred to the Department of Public Safety;

(3) Administration of laws and regulations relating to certification of motor carriers and limousine carriers is transferred to the Department of Public Safety and administration of laws and regulations relating to carrier registration and registration and titling of vehicles is transferred to the Department of Revenue;

(4) Administration of laws relating to motor vehicle franchise practices is transferred to the Department of Revenue;

(5) Administration of laws relating to handicapped parking permits is transferred to the Department of Revenue;

(6) Responsibility for establishment of safety standards for motor vehicles and motor vehicle components is generally transferred to the Department of Public Safety except as may be specifically otherwise provided by law;

(7) Administration of laws relating to hazardous materials carriers is transferred to the Department of Public Safety;

(8) Enforcement of all state laws on the following properties owned or controlled by the Department of Transportation or the State Road and Tollway Authority is transferred to the Department of Public Safety: rest areas, truck-weighing stations or checkpoints, wayside parks, parking facilities, toll facilities, and any buildings and grounds for public equipment and personnel used for or engaged in administration, construction, or maintenance of the public roads or research pertaining thereto;

(9) Enforcement of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers is transferred to the Department of Public Safety;

(10) Enforcement of Code Sections 32-9-4 and 40-6-54, relating to designation of restricted travel lanes is transferred to the Department of Public Safety;

(11) Enforcement of Code Section 16-11-43, relating to obstructing highways, streets, sidewalks, or other public passages, on any public road which is part of the state highway system is transferred to the Department of Public Safety;

(12) Enforcement of Code Section 16-7-43, relating to littering public or private property or waters, on any public road which is part of the state highway system is transferred to the Department of Public Safety; and

(13) Enforcement of Code Section 16-7-24, relating to interference with government property, on any public road which is part of the state highway system is transferred to the Department of Public Safety.

(c) In the performance of its duties, the department shall be required to comply with all applicable federal laws and rules and regulations and shall certify that the state is in compliance with all provisions and requirements of all applicable federal-aid acts and programs. (Code 1981, § 40-16-2, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2000, p. 1199, § 1; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2003, p. 484, § 14; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2012, p. 580, § 11/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Department of Public Safety" for "Public Service Commission" near the middle of paragraph (b)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, the second subsection (b) was redesignated as subsection (c).

JUDICIAL DECISIONS

Inspection of commercial vehicles valid and constituted no Fourth Amendment violation. — Because Georgia's commercial vehicle scheme under O.C.G.A. § 40-16-2(b)(3) and its regulations provided ample notice that such vehicles could be stopped and inspected, and the inspections were limited as to who could perform the inspections and the cargo and documents to be inspected, denying the defendant's motion to suppress the drugs found in the defendant's com-

mercial vehicle was proper under the Fourth Amendment; O.C.G.A. § 40-16-5(c) expressly exempted any requirement that the rules and regulations be promulgated pursuant to the Georgia Administrative Procedure Act and the rules and regulations were effective. *United States v. Ponce-Aldona*, 579 F.3d 1218 (11th Cir. 2009), cert. denied, 558 U.S. 1128, 130 S. Ct. 1094, 175 L. Ed. 2d 912 (2010).

Cited in *White v. Ga. Dep't of Motor*

Vehicle Safety, No. 1:04-CV-0790-JOF,
2006 U.S. Dist. LEXIS 2735 (N.D. Ga.
Jan. 12, 2006).

40-16-2.1. Annual reports to the General Assembly.

Annual reports shall be provided to the General Assembly by the affected departments with respect to the reorganization provided for in Code Section 40-16-2 and with respect to other activities of the departments as follows:

(1) The Department of Driver Services shall provide an annual report which shall include, together with other information deemed pertinent by the department, service metrics clearly indicating the department's ability to meet public demand for its services; and

(2) The Department of Public Safety shall provide an annual report which shall include, together with other information deemed pertinent by the department, the records of the department with respect to safety inspections and citations issued. (Code 1981, § 40-16-2.1, enacted by Ga. L. 2005, p. 334, § 1-1/HB 501.)

40-16-3. Board of Driver Services; commissioner.

(a) The department shall be under the direction, control, and management of the Board of Driver Services and the commissioner of driver services. The commissioner shall be appointed by and serve at the pleasure of the board.

(b)(1) The Board of Driver Services shall be a successor to and continuation of the Board of Motor Vehicle Safety and shall consist of nine members. Five members shall be appointed by the Governor and their terms shall expire as follows: two members on June 30, 2003, and June 30 of each sixth year thereafter; two members on June 30, 2005, and June 30 of each sixth year thereafter; and one member on June 30, 2007, and June 30 of each sixth year thereafter. Two members shall be appointed by the Lieutenant Governor and their terms shall expire as follows: one member on June 30, 2003, and June 30 of each sixth year thereafter and one member on June 30, 2006, and June 30 of each sixth year thereafter. Two members shall be appointed by the Speaker of the House and their terms shall expire as follows: one member on June 30, 2003, and June 30 of each sixth year thereafter and one member on June 30, 2006, and June 30 of each sixth year thereafter. All members except for the initial appointees shall serve for terms of six years and until their successors are appointed and qualified.

(2) All members serving on the Board of Motor Vehicle Safety as of May 2, 2005, shall continue to serve as members of the Board of

Driver Services for the remainder of their original terms of office and shall if necessary hold over beyond the end of those terms until successors are appointed and qualified.

(c) The Governor shall designate a member to serve as chairperson of the board. The chairperson's term as chairperson shall expire on June 30, 2003, and June 30 of each second year thereafter. The board may elect other officers from among its membership and may establish bylaws for the conduct of its business.

(d) The members of the board shall receive no salary for their service on the board but any member who is not otherwise a state officer or employee shall receive a per diem expense allowance as provided in subsection (b) of Code Section 45-7-21.

(e) The board shall be the general policy-making body for the Department of Driver Services; and the commissioner shall be the chief executive officer of the department, subject to the policies established by the board. All rules and regulations promulgated by the commissioner must be approved by the board before they take effect.

(f) The commissioner shall receive an annual salary to be set by the board which shall be his or her total compensation for services as commissioner. The commissioner shall be reimbursed for all actual and necessary expenses incurred by him or her in carrying out his or her official duties.

(g) The commissioner shall take and subscribe before the board an oath to discharge faithfully and impartially the duties of such office, which oath shall be in addition to the oath required of all civil officers. (Code 1981, § 40-16-3, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2002, p. 837, § 1; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2006, p. 72, § 40/SB 465.)

JUDICIAL DECISIONS

Cited in White v. Ga. Dep't of Motor Vehicle Safety, No. 1:04-CV-0790-JOF, 2006 U.S. Dist. LEXIS 2735 (N.D. Ga. Jan. 12, 2006).

40-16-4. Duties of commissioner.

(a) The commissioner shall establish such units within the department as he or she deems proper for its administration and shall designate persons to be directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The commissioner shall have the authority to employ as many persons as he or she deems necessary for the administration of the department and for the discharge of the duties of his or her office. He or she shall issue all necessary directions, instructions, orders, and rules

applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate, and discharge employees of the department within the limitations of the department's appropriation and the restrictions set forth by law.

(c) All employees of the department shall be compensated upon a fixed salary basis and no person shall be compensated for services to the department on a commission or contingent fee basis.

(d) Neither the commissioner nor any officer or employee of the department shall be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service or pretended service either rendered or to be rendered as commissioner or as an officer or employee of the department.

(e)(1) The commissioner shall have the authority to appoint and employ 30 investigators who shall be certified peace officers pursuant to the provisions of Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act."

(2) The investigators of the department shall have jurisdiction throughout this state with such duties and powers as are prescribed by law.

(f) The department shall have the authority to contract and make cooperative and rental agreements with the United States government; any county, municipality, or local government, or any combination thereof; any public or private corporation or firm; or any public authority, agency, commission, or institution, including agencies of state government, for the purpose of obtaining goods, materials, and services needed to perform any of the duties, responsibilities, or functions vested in the department. (Code 1981, § 40-16-4, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2007, p. 117, § 7/HB 419; Ga. L. 2010, p. 932, § 26/HB 396.)

40-16-5. Authority of commissioner.

(a) Subject to approval by the board, the commissioner shall have the power to make and publish in print or electronically reasonable rules and regulations not inconsistent with this title or other laws or with the Constitution of this state or of the United States for the administration of this chapter or any law which it is his or her duty to administer.

(b) The commissioner may prescribe forms as he or she deems necessary for the administration and enforcement of this chapter or any law which it is his or her duty to administer.

(c) The authority granted to the commissioner pursuant to this Code section shall be exercised at all times in conformity with Chapter 13 of

Title 50, the "Georgia Administrative Procedure Act"; provided, however, that regulations governing commercial driver licensing may be adopted by administrative order referencing compatible federal regulations or standards without compliance with the procedural requirements of Chapter 13 of Title 50; provided, further, that such compatible federal regulations or standards shall be maintained on file by the department and made available for inspection and copying by the public, by means including but limited to posting on the department's computer Internet site.

(d) Rules and regulations previously adopted which relate to functions performed by the Department of Driver Services shall remain of full force and effect as rules and regulations of the Department of Driver Services until amended, repealed, or superseded by rules or regulations adopted by the commissioner of driver services. The following rules and regulations shall remain of full force and effect as rules and regulations of the referenced department until amended, repealed, or superseded by rules or regulations adopted by the referenced department:

(1) All rules and regulations previously adopted which relate to functions transferred under this chapter to the Department of Transportation from the Department of Motor Vehicle Safety;

(2) All rules and regulations previously adopted which relate to functions transferred under this chapter to the Public Service Commission from the Department of Motor Vehicle Safety;

(3) All rules and regulations previously adopted which relate to functions transferred under this chapter to the Department of Public Safety from the Department of Motor Vehicle Safety;

(4) All rules and regulations previously adopted which relate to functions transferred under this chapter to the Department of Revenue from the Department of Motor Vehicle Safety; and

(5) All rules and regulations previously adopted which relate to functions transferred under this chapter from the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) to the Department of Driver Services.

(e) All valid licenses, permits, certificates, and similar authorizations previously issued by any department or agency with respect to any function transferred as provided in this chapter shall continue in effect until the same expire by their terms unless they are suspended, revoked, or otherwise made ineffective as provided by law.

(f) Notwithstanding any provision of law to the contrary, the commissioner is authorized to promulgate regulations allowing for back-

ground investigations of applicants for credentials in any of the industries regulated by the department by means other than classifiable electronically recorded fingerprints in instances in which an applicant attempts to comply with the applicable statutory language mandating such background investigation, but his or her fingerprints cannot be captured electronically for reasons that are beyond the applicant's control. (Code 1981, § 40-16-5, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2002, p. 1378, § 7; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2009, p. 453, § 3-22/HB 228; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2011, p. 355, § 18/HB 269.)

JUDICIAL DECISIONS

Rules and regulations permitting search of commercial vehicle valid. —

Because Georgia's commercial vehicle scheme under O.C.G.A. § 40-16-2(b)(3) and its regulations provided ample notice that such vehicles could be stopped and inspected, and the inspections were limited as to who could perform the inspections and the cargo and documents to be inspected, denying the defendant's motion to suppress the drugs found in the defen-

dant's commercial vehicle was proper under the Fourth Amendment; O.C.G.A. § 40-16-5(c) expressly exempted any requirement that the rules and regulations be promulgated pursuant to the Georgia Administrative Procedure Act O.C.G.A. Ch. 13, T. 50, and the rules and regulations were effective. *United States v. Ponce-Aldona*, 579 F.3d 1218 (11th Cir. 2009), cert. denied, 558 U.S. 1128, 130 S. Ct. 1094, 175 L. Ed. 2d 912 (2010).

40-16-5.1. Use of department vehicles and equipment.

(a) Except as otherwise provided in this Code section, no department motor vehicles shall be used by any investigators employed by the department except in the discharge of official duties. Any other equipment shall be used only with the express written approval of the commissioner.

(b) The commissioner may adopt rules and regulations governing the use of equipment. The commissioner may adopt rules and regulations pursuant to which investigators employed by the department may use a department motor vehicle while working an approved off-duty job, provided that any such use shall comply with such conditions as may be imposed by the commissioner, which conditions shall include but shall not be limited to a finding of public benefit and reimbursement to the department by the employer or employee for use of the vehicle.

(c) At no time will an off-duty employee be allowed use of a department motor vehicle at any political function of any kind. (Code 1981, § 40-16-5.1, enacted by Ga. L. 2002, p. 838, § 4; Ga. L. 2005, p. 334, § 1-1/HB 501.)

40-16-6. Civil monetary penalties.

(a) To the extent specifically authorized by law, the commissioner may pursuant to rule or regulation specify and impose civil monetary penalties for violations of laws, rules, and regulations administered by the commissioner. Except as may be hereafter authorized by law, the maximum amount of any such monetary penalty shall not exceed the maximum penalty authorized by law or rule or regulation for the same violation immediately prior to July 1, 2005.

(b) All proceedings for the imposition of civil monetary penalties by the commissioner and other contested cases to be decided by or under authority of the commissioner shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." All such administrative proceedings which are pending on July 1, 2005, under laws the administration of which is transferred from the commissioner of motor vehicle safety to another enforcement agency shall be transferred to the jurisdiction of such other enforcement agency as of July 1, 2005.

(c) The amendment of this chapter and the Act by which it is amended shall not affect or abate the status as a crime of any act or omission which occurred prior to July 1, 2005, nor shall the prosecution of such crime be abated as a result of such amendment. (Code 1981, § 40-16-6, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2003, p. 177, § 5; Ga. L. 2005, p. 334, § 1-1/HB 501.)

40-16-7. Budget of department.

(a) The department shall be a budget unit to which funds may be appropriated as provided in the "Budget Act," Part 1 of Article 4 of Chapter 12 of Title 45. The department shall be an independent and distinct department of state government. The duties of the department shall be performed by that department and not by any other agency of state government, and the department shall not perform the duties of any other agency of state government. The position of commissioner of driver services shall be a separate and distinct position from any other position in state government. The duties of the commissioner shall be performed by the commissioner and not by any other officer of state government, and the commissioner shall not perform the duties of any other officer of state government.

(b) Appropriations for functions transferred to and from the Department of Motor Vehicle Safety and other departments may be transferred to and from such departments as provided for in Code Section 45-12-90, relating to disposition of appropriations for duties, purposes, and objects which have been transferred. Personnel, equipment, and facilities previously employed for such transferred functions shall

likewise be transferred to the appropriate departments. Contracts relating to functions transferred to and from the Department of Motor Vehicle Safety and other departments, and any rights of renewal under such contracts, shall also be transferred to the appropriate departments. Any disagreement between such departments as to any such transfers shall be determined by the Governor.

(c) Except as specifically provided otherwise by law, all fines and forfeitures collected for criminal violations cited by the department's investigators shall, after deduction from the total fine or forfeiture of the amounts due the Peace Officers' Annuity and Benefit Fund and the Sheriffs' Retirement Fund of Georgia and any other deductions specified by law, be paid by the clerk of the court into the fine and forfeiture fund of the county treasurer in the same manner and subject to the same rules of distribution as other fines and forfeitures. (Code 1981, § 40-16-7, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2005, p. 334, § 1-1/HB 501.)

JUDICIAL DECISIONS

Cited in *White v. Ga. Dep't of Motor Vehicle Safety*, No. 1:04-CV-0790-JOF, 2006 U.S. Dist. LEXIS 2735 (N.D. Ga. Jan. 12, 2006).

40-16-8. Governor's Commercial Transportation Advisory Committee.

(a) There shall be established, within the department, the Governor's Commercial Transportation Advisory Committee. The purpose of this committee is to advise the Governor on all laws, regulations, rules, and other matters related to the operation within this state of motor carriers, including private carriers, as defined in Code Section 46-1-1. The committee shall also serve as a forum for representatives of the motor carrier industry to meet with representatives of the various state agencies responsible for the oversight, enforcement, taxation, and regulation of the commercial transportation industry.

(b) The committee shall consist of the following members:

- (1) The commissioner of driver services or his or her designee;
- (2) The commissioner of public safety or his or her designee;
- (3) The commissioner of transportation or his or her designee;
- (4) The state revenue commissioner or his or her designee;
- (5) The Speaker of the House or his or her designee;
- (6) The chairperson of the House Transportation Committee, who shall chair the committee;

- (7) The President Pro Tempore of the Senate or his or her designee;
- (8) The chairperson of the Senate Transportation Committee;
- (9) The president of the Georgia Motor Trucking Association or his or her designee;
- (10) Five industry representatives appointed by the Governor; and
- (11) The Governor or his or her designee who shall serve ex officio.

(c) Each member of the committee shall serve until replaced. All members of the committee shall have equal voting privileges on all matters brought before the committee. The committee shall meet at least three times per year at a date and time set by the chairperson. The chairperson shall prepare an agenda for each meeting and shall distribute the agenda for each meeting at least 20 days prior to the date of the meeting. (Code 1981, § 40-16-8, enacted by Ga. L. 2005, p. 330, § 1/HB 458; Ga. L. 2006, p. 72, § 40/SB 465.)

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- Live communication with school or public safety officials. Driver to have ability for, §40-6-161.

Texting while driving.

- Writing, sending or reading while operating motor vehicle prohibited, §40-6-241.2.

WORKERS' COMPENSATION.

Motor carriers.

- Certification of motor carriers. Compliance with workers' compensation laws, §40-1-101.
- Requirement of insurance, §40-1-101.

WORLD WAR I.

Motor vehicle license plates, §40-2-67.

- Veterans serving during active military combat, §40-2-85.1.

WORLD WAR II.

Motor vehicle license plates.

- Veterans serving during active military combat, §40-2-85.1.

WRECKERS.

Abandoned vehicles generally, §§40-11-1 to 40-11-24.

Identification numbers, §40-4-5.

Incapacitated vehicles.

- Removal from state highways, §40-6-275.

Law enforcement.

- When police officers may remove vehicles, §40-6-206.

Lights.

- Mounted height of lights, §40-8-21.

Motor vehicle accidents.

- Duty of driver of wrecker truck, §40-6-276.

Passing stationary towing vehicles with flashing lights, §40-6-16.

Used motor vehicle parked on real property for purposes of sale.

- Towing and storing vehicles in violation, §40-2-39.1.

WRECKS.

Motor vehicle accidents generally, §§40-6-270 to 40-6-278.

Y

YELLOW TRAFFIC SIGNALS.

Flashing yellow arrow, §40-6-21.

Flashing yellow indications, §40-6-23.

Steady yellow indications, §40-6-21.

YIELD SIGNS.

Duties of drivers approaching and right of way, §40-6-72.

Stopping or parking in front of, §40-6-203.

Z

ZERO TOLERANCE LAW.

Minor driving after consuming alcohol, §40-6-391.

ZIGZAG COURSES.

Traffic laws, §40-6-251.

ZOOS.

Zoo Atlanta, special license plate supporting, §40-2-86.

